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CH. 50
TRAFFIC OFFENSES

Top

§50-1
Generally

People v. O'Brien, 197 Ill.2d 88, 754 N.E.2d 327 (2001) Under 720 ILCS 5/4-9, a person may be convicted of an offense which does not include an explicit mental state if the crime is a misdemeanor which is not punishable by incarceration or a fine exceeding $500, or if the statute defining the offense clearly indicates a legislative intent to create an absolute liability offense. Absent a clear indication of intent or an important public policy favoring absolute liability, courts will require a culpable mental state even if the statute appears to impose absolute liability. To prove the offense of operating an uninsured motor vehicle, the State is not required to show that defendant either knew or should have known that the vehicle he was driving was uninsured. The plain language of 625 ILCS 5/3-707, which creates the offense, "unquestionably provides for absolute liability." Furthermore, the penalty for the offense is "relatively minor," and the legislature explicitly chose to provide a culpable mental state for related offenses. Under these circumstances, the legislature clearly intended that operating an uninsured motor vehicle should be an absolute liability offense.

People v. Hasprey, 194 Ill.2d 84, 740 N.E.2d 780 (2000) 730 ILCS 5/5-5-6, which authorizes restitution for offenses under the Criminal Code which resulted in any injury to a person or damage to real or personal property, does not authorize restitution for offenses created under the Illinois Vehicle Code. The Vehicle Code has a restitution provision for vehicle theft, but does not authorize restitution for reckless driving. Based on the plain language of 625 ILCS 5/11-503, the Supreme Court rejected defendant's argument that to be convicted of reckless driving a defendant must have acted both willfully and wantonly. Section 11-503 provides that a person commits reckless driving by driving a vehicle with "willful or wanton disregard for the safety of persons or property."

In re K.C., 186 Ill.2d 542, 714 N.E.2d 491 (1999) The minors were charged with committing offenses under 625 ILCS 5/4-102, which creates a Class A misdemeanor (Class 4 felony for a subsequent offense) where a person, without authority, damages, removes or tampers with any part of a vehicle. The Supreme Court held that §4-102 violates due process by punishing what may be wholly innocent conduct without requiring a culpable mental state.

People v. Norris, et al., 214 Ill.2d 92, 824 N.E.2d 205 (2005) Supreme Court Rules 504 and 505, which implement a general policy against requiring multiple appearances by defendants charged with traffic offenses, do not guarantee that a traffic defendant will receive a trial on the merits at the first appearance date. Furthermore, Rule 504 and 505 do not preclude a trial court from granting a continuance because the arresting officer fails to appear. Instead, Rules 504 and 505 provide the trial judge with discretion in scheduling cases. Because the record did not indicate whether the judges in question denied the State's motions for continuances because they believed they lacked discretion to grant continuances where the arresting officer failed to appear at the first appearance date on a traffic charge, or in the exercise of discretion, the causes were remanded. The State was not barred by Rules 504 and 505 from refiling charges which had been previously nol prossed because the arresting officer failed to appear at the first hearing date. A nolle prose qui is a formal entry by the prosecuting attorney indicating an unwillingness to prosecute a case. Where nolle prose qui is entered before jeopardy attaches, the State is entitled to refile the charges unless there is a showing of harassment, bad faith or fundamental unfairness.

People v. Nunn, 77 Ill.2d 243, 396 N.E.2d 27 (1979) To sustain a conviction for leaving the scene of accident , the prosecutor must prove that the defendant had knowledge that the vehicle he was driving was involved in an accident or collision. It is not necessary, however, for the prosecution to also prove that the

accused knew that injury or death resulted from the collision.

Cesena v. DuPage County, 145 Ill.2d 32, 582 N.E.2d 177 (1991) An unidentified motorist (John Doe) struck and killed a pedestrian, and fled the scene. About two hours later, John Doe contacted an attorney (Fawell) who advised him that he was required to file an accident report within three hours of the accident. John Doe related to Fawell the information required and Fawell prepared a written report. Fawell and John Doe went to the Sheriff's Office within the three-hour period and attempted to file the report. The deputy on duty refused to accept the report, claiming that it was to be filed with the State Police. Fawell unsuccessfully (and correctly) urged that the report had to be made within three hours and could be filed at the sheriff's office. However, Fawell and John Doe eventually left without filing the report. Fawell later called the police and informed them of the accident. Fawell subsequently asserted the attorney-client privilege and refused to disclose the client's name when deposed as part of a civil suit against the sheriff's office by the estate of the victim. Fawell was eventually held in contempt for refusing to disclose the name. The Supreme Court found that the "equities of this case demand resolution on equitable grounds." The accident report could have been filed with the sheriff's office. However, the deputy's ministerial error in refusing to accept the report caused harm both to John Doe and to the accident victim's estate. "Therefore we deem the accident report timely filed and order Fawell to submit this report to the circuit court. We holdthat John Doe has timely complied with the reporting statute."

People v. Johns & Wall, 153 Ill.2d 436, 607 N.E.2d 148 (1992) The Supreme Court ruled that there is a rational relationship between the possession of incomplete titles and the legislative purposes of preventing thefts of motor vehicles and facilitating the tracing, accuracy, and security of automobile titles. In addition although possession of an incomplete title may result in a more severe penalty than would be imposed for the theft of the same vehicle, the penalty is not so disproportionate to the offenses as to shock the moral sense of the community. See also, **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992) (Illinois law requires that a defendant knowingly possess an incomplete title with the intent to commit a crime); **People v. Gean**, 143 Ill.2d 281, 573 N.E.2d 818 (1991).

People v. Simmons, 145 Ill.2d 264, 583 N.E.2d 484 (1991) The Court upheld the validity of Ch. 95½, ¶3-707, which provides that any person who operates a motor vehicle not covered by a liability insurance policy is guilty of a business offense and "shall be required to pay a fine in excess of $500, but not more than $1,000." The mandatory fine does not violate equal protection or constitute excessive punishment under the Eighth Amendment.

People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756 (1989) Defendant was convicted of leaving the scene of an accident involving a death and contended that the trial judge erred in refusing an instruction on the defense of necessity. The evidence showed that the defendant's car hit and killed a person walking on a highway. The impact caused the windshield to shatter. In support of his alleged necessity defense, defendant testified that he thought a mailbox had been thrown at his car, and that he left the scene to call the police because he feared for his safety. The Court noted that the necessity defense involves the choice "between two admitted evils where other optional courses of action are unavailable, and the conduct chosen must promote some higher value than the value of literal compliance with the law." Since the defendant claimed he was unaware of the accident, he could not have been balancing between the lesser of two evils. Thus, the defendant's testimony would not rise to a necessity defense. Rather, the defendant's testimony, if believed, would have refuted one of the elements of the crime of leaving the scene of an accident, (i.e., that he knew he was involved in an accident.)

Chicago v. Hertz, 71 Ill.2d 333, 375 N.E.2d 1285 (1978) To establish a parking violation case a municipality must prove (1) the existence of an illegally parked vehicle, and (2) the registration of that vehicle in the name of the defendant. To absolve himself of responsibility defendant must show that the vehicle was not parked

illegally or that he was not the registered owner. Proof that the vehicle was in the possession of another at the time of the violation is irrelevant.

People v. Tumminaro, 102 Ill.2d 331, 465 N.E.2d 90 (1984) The Supreme Court upheld Ch. 95½, ¶11-1403, which provides that "any person who operates a motorcycle on one wheel is guilty of reckless driving." The Court found that the statute creates an absolute liability, which is not unreasonable or arbitrary, because the legislature could reasonably determine that "one-wheel motorcycle driving is dangerous and that strict punishment of drivers who operate motorcycles on one wheel would better protect people and property in the vicinity."

People v. Kohrig, 113 Ill.2d 384, 498 N.E.2d 1158 (1986) The Court held that the mandatory seat safety belt law does not infringe upon a fundamental right of privacy and that there is a rational basis for requiring the use of seat belts (i.e., to "protect persons other than the belt wearers by helping drivers maintain control of their vehicles and . . . promote [the] economic welfare of the State by reducing the costs associated with serious injuries and deaths caused by automobile accidents").

People v. Lindner, 127 Ill.2d 174, 535 N.E.2d 829 (1989) Ch. 95½, ¶6-205(b)(2) which provided that a conviction for certain sex offenses would result in the mandatory revocation of the defendant's driver's license, without regard to whether a motor vehicle was used in the commission of the offense is unconstitutional. The Court found that the statute does not bear a reasonable relationship to the State's interest of keeping the roads free from those who threaten the safety of others or abuse the driving privilege.

People v. Morris, 136 Ill.2d 157, 554 N.E.2d 235 (1990) Defendant was convicted of possession of an altered temporary registration permit. The conviction was based upon the fact that the defendant altered the expiration date of the temporary registration permit on his own vehicle. The Supreme Court reversed the conviction holding that "a Class 2 penalty for a person who alters a temporary registration permit for a vehicle he or she owns or to which he or she is legally entitled is not reasonably designed to protect automobile owners against theft, nor is it reasonably designed to protect the general public against the commission of crimes involving stolen motor vehicles. Such a penalty is violative of the due process clause of our constitution, and may not stand."

People v. Murphy, 108 Ill.2d 228, 483 N.E.2d 1288 (1985) Defendant was charged with reckless homicide arising out of a traffic accident in which defendant's passenger was killed. Following the accident, defendant was taken to a hospital where a doctor, in the course of emergency treatment, ordered a blood sample taken. The sample was taken and analyzed by a medical technician at the hospital laboratory. The sample was suppressed at trial because neither the laboratory nor the technician had been certified by the Department of Public Health, as required by Ch. 95½, ¶11-501.2. The Court held that under the clear language of ¶11-501.2, the certification requirements for admissibility apply only to proceedings arising out of an arrest for driving under the influence. In other situations (as here), the "ordinary standards of admissibility will be applied."

People v. Wawczak, 109 Ill.2d 244, 486 N.E.2d 911 (1985) Ch. 95½, ¶11-1003.1 states: "Notwithstanding other provisions of this Code or the provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian, or any person operating a bicycle or other device propelled by human power and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person." The Court upheld the statute: "When the statute is read with reference to the judicial definition of 'due care' it is clear that the statute is not impermissibly vague. The statute makes it clear that drivers must attempt to avoid colliding with bicyclists and pedestrians, employing that degree of care which a reasonable person

would have in the same situation. The fact that judges and juries might differ to some degree as to what care a reasonable person might employ does not make the standard a subjective one. A statute is not vague merely because it requires the trier of fact to determine a question of reasonableness."

People ex rel. Eppinga v. Edgar, 112 Ill.2d 101, 492 N.E.2d 187 (1986) The Supreme Court upheld the revocation of plaintiff's driving privileges pursuant to Ch. 95½, ¶6-206, and rejected the plaintiff's contention that the lack of a prerevocation hearing denied due process.

People v. Tosch, 114 Ill.2d 474, 501 N.E.2d 1253 (1986) The defendant was arrested for standing in the road and stopping vehicles containing males and engaging them in conversation. She was charged with the offense of "Pedestrians soliciting rides or business" (Ch. 95½, ¶¶11-1006(a) & (b)) which provides that (a) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle and (b) No person shall stand on a highway for the purpose of soliciting employment or business from the occupant of any vehicle." Subsection (c) of the statute provides an exception under which charitable organizations engaged in a Statewide fundraising activity are allowed to solicit contributions from vehicles at intersections where all traffic is required to come to a full stop. The Supreme Court upheld the validity of the statute holding that the statute does not involve or abridge any First Amendment right and does not create an unreasonable classification. The Court stated,"the State may treat different classes of persons differently, and absent a fundamental right may differentiate between persons similarly situated if there is a rational basis for doing so. The General Assembly has determined that soliciting rides or business on the public highways creates problems concerning the health, safety and welfare of the citizens of this State. It has apparently also decided that solicitation of charitable contributions stands on a different footing than solicitation for other purposes and results in benefits to the public which offset the risks inherent in solicitation on the highways. We find the classification reasonably related to a legitimate governmental objective."

People v. One 1979 Pontiac, 89 Ill.2d 506, 433 N.E.2d 1301 (1982) An individual purchased a 1979 Pontiac from an auto dealer, and received a title containing a vehicle identification number which matched the number on the dashboard of the automobile. It was later discovered that the Pontiac carried a false VIN number. Additionally, the hidden "confidential" VIN number was mutilated, making it impossible to determine the true VIN. Pursuant to Ch. 95½, ¶4-107(i), the Pontiac was seized as contraband to be sold. Chapter 95½, ¶4-107(i) provides that an automobile which has the manufacturer's identification number removed, altered, defaced or destroyed may be seized. If the true manufacturer's identification number cannot be identified, the automobile shall be considered contraband. The statute also states that a person owning, leasing or possessing such an automobile has no property rights in it and that the automobile may be sold. The Supreme Court held that the above statute violates due process by depriving an innocent purchaser of his property. The purchaser in this case took the necessary steps to assure himself that the identification number on the title matched that on the vehicle.

People v. Brown, 98 Ill.2d 374, 457 N.E.2d 6 (1983) The Court upheld the validity of Ch. 95½, ¶4-102(a)(4), which makes it a Class A misdemeanor to possess a motor vehicle or component part if the identification number has been removed or falsified and "such a person has no knowledge that the number is removed or falsified." The legislature has the authority to create absolute liability offenses, without a knowledge requirement, and this statute is a reasonable use of the police power to combat the steady increase in stolen motor vehicles and their parts.

Malone v. Cosentino, 99 Ill.2d 29, 457 N.E.2d 395 (1983) Defendant pleaded guilty to certain traffic violations, was ordered to pay fines, and was sentenced to a year of supervision. The fines included $24.50 payable to the Traffic and Criminal Conviction Surcharge Fund of the State Treasury and $10 in fees to provide proceeds for financing the court system. Defendant did not appeal from his conviction or sentence, but filed a class action suit seeking an injunction on the ground that the statutes creating the assessments and

fees violate equal protection. The Supreme Court held that the defendant's complaint should have been dismissed because it was an impermissible collateral attack on his criminal conviction. "Once a court with proper jurisdiction has entered a final judgment, that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute." In this case, the trial court had jurisdiction and defendant failed to challenge the penalties on direct appeal.

People v. Searle, 86 Ill.2d 385, 427 N.E.2d 65 (1981) The defendant was charged with unknowingly possessing a motorcycle without a required identification number. The motorcycle was seized, but the charges were dropped. Defendant sought the return of his motorcycle, but the State refused until defendant paid storage charges of several thousand dollars pursuant to Ch. 95½, ¶4-207. The Supreme Court discussed the purposes of the various storage charge provisions of the Illinois Vehicle Code, and held that neither ¶4-207 nor the other sections were applicable. The defendant was entitled to the return of his motorcycle without charge.

People v. Sass, 144 Ill.App.3d 163, 494 N.E.2d 745 (4th Dist. 1986) The defendant, a resident of Illinois, had his driver's license revoked in 1982. In 1984, defendant moved to Wisconsin, where he was issued a valid Wisconsin driver's license. In 1985 defendant was arrested in Illinois and convicted of driving while his driver's license was revoked. The Court upheld the conviction. Compare, **People v. Klaub**, 130 Ill.App.3d 704, 474 N.E.2d 851 (3d Dist. 1985) (defendant's valid license from Indiana, which is a party to the Driver License Compact, was sufficient to preclude Illinois conviction for driving while his Illinois license was revoked).

People v. DePalma, 256 Ill.App.3d 206, 627 N.E.2d 1236 (2d Dist. 1994) The defendant was indicted for possession of a vehicle with knowledge that the Vehicle Identification Number (VIN) had been removed, a Class 2 felony under Ch. 95½, ¶4-103(a)(4) (625 ILCS 5/4-103(a)(4)). The evidence showed that defendant was in possession of a car with a temporary buyer plate from Texas. When the investigating officer discovered that the dashboard VIN was missing, defendant said that the VIN plates on the dash and door jams had been removed when the vehicle was stolen from the previous owner. There was also testimony that defendant had been stopped twice in the recent past concerning the missing VIN numbers, and that the car was stolen in Florida but had been recovered several months earlier. The State did not contest that defendant was lawfully in possession of the vehicle. Defendant claimed that §4-103(a)(4) violates due process because it imposes the same punishment for innocent possession as for possession by a thief who removed the VIN numbers. The Appellate Court found that defendant's argument would be persuasive if the statute was interpreted as written. However, under **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992) and **People v. Gean**, 143 Ill.2d 281, 573 N.E.2d 818 (1991), the statute must be read as requiring that the defendant act with the intent to defraud or commit a crime. (In Tolliver and Gean, the Illinois Supreme Court held that another section of the Traffic Code which did not require a culpable mental state should be interpreted to require that the defendant act with "criminal knowledge.") The Court reversed the conviction, finding that although the evidence showed that defendant knew that the VIN plates had been removed, there was no showing that he intended to defraud or to commit a crime.

People v. Eberhardt, 138 Ill.App.3d 148, 485 N.E.2d 876 (3d Dist. 1985) Defendant previously resided in Illinois and had an Illinois driver's license. In 1982 he moved to Texas, acquired a Texas driver's license, and allowed his Illinois license to expire. While visiting Illinois in 1984, defendant was convicted of DUI. He was notified that his expired Illinois license was revoked. Defendant still possessed a valid Texas license, however, and Illinois authorities did not report defendant's conviction to Texas authorities (as is required by Ch. 95½, ¶6-202(c)). On a subsequent visit to Illinois, the defendant was arrested and convicted of driving while his license was revoked. The Court held that the Texas driver's license gave the defendant a right to drive in Illinois. "Because neither the Texas license nor defendant's privilege thereunder to drive as a

nonresident in Illinois were affected by the revocation of the previously expired Illinois license, defendant had a perfect right to drive in Illinois. The State knew at all times relevant to this case that defendant had a valid Texas license. By failing to either properly take action against defendant's nonresident driving privilege or to notify Texas of defendant's conviction, the State invited the defendant's conduct and abandoned any right to claim that he could not operate as a nonresident under a valid foreign license."

People v. Benton, 322 Ill.App.3d 958, 751 N.E.2d 1257 (3d Dist. 2001)The Appellate Court held that 625 ILCS 5/3-707, which provides that an uninsured motor vehicle may not be operated in Illinois, is inapplicable to vehicles registered in other states.

People v. Merritt, 318 Ill.App.3d 115, 742 N.E.2d 451 (3d Dist. 2001) The Court found that defendant was not proven guilty beyond a reasonable doubt of driving an uninsured motor vehicle. When asked at trial why he had issued the citation, the officer responded, "[T]here was no evidence that the vehicle was insured. There was no insurance card presented to me at the time of this traffic stop." Under 625 ILCS 5/3-707, a driver may be convicted of driving an uninsured vehicle if he fails to comply with a request by a law enforcement officer for proof of insurance. Because there was no evidence that the officer asked anyone to produce an insurance card, but only that no valid card was shown, there was an insufficient basis to infer that defendant was driving an uninsured vehicle.

People v. Rodgers, 322 Ill.App.3d 199, 748 N.E.2d 849 (2d Dist. 2001) The State is not required to prove that the defendant did not have a restricted driving permit from another state in order to prove the offense of driving while license revoked under 625 ILCS 5/6-303(a). The defense bears the burden of proof on exceptions to liability which merely withdraw "certain acts or certain persons from the operation of the statute."

People v. Nadermann, 309 Ill.App.3d 1016, 723 N.E.2d 857 (2d Dist. 2000) The court concluded that 625 ILCS 5/11-502, which prohibits the presence of alcohol in the passenger compartment of a vehicle except "in the original container and with the seal unbroken," was not violated where a torn cardboard outer package contained several unopened cans of beer.

People v. Martinez, 296 Ill.App.3d 330, 694 N.E.2d 1084 (2d Dist. 1988) An all-terrain vehicle is a "motor vehicle" for purposes of the Illinois Vehicle Code. Therefore, a defendant who drove an A.T.V. on a public street could be prosecuted for driving with a suspended license.

People v. Stevens, 125 Ill.App.3d 854, 466 N.E.2d 1321 (3d Dist. 1984) The offense of driving while suspended involves absolute liability. A conviction requires only proof that defendant drove while his license was suspended; defendant's receipt of notice or knowledge of the suspension is immaterial. See also, **People v. Johnson**, 170 Ill.App.3d 828, 525 N.E.2d 546 (4th Dist. 1988).

People v. Dodd, 173 Ill.App.3d 460, 527 N.E.2d 1079 (2d Dist. 1988) Where documents from the Secretary of State's office were conflicting as to the date on which defendant's driver's license was suspended, the trial court erred by altering the date of suspension on the documents. The Court stated that it could find no authority for a trial judge to resolve conflicts in certified copies of the Secretary of State's records against a criminal defendant. "The fact that the two documents reflected different dates for the termination of defendant's driver's license merely presented conflicting evidence for the jury, to resolve. . . In this case, the jury's function was invaded by alteration of the certificate, a document introduced in its original certified form by the prosecution."

People v. Podhrasky, 197 Ill.App.3d 349, 554 N.E.2d 578 (5th Dist. 1990) A reckless driving information

alleged that defendant "drove a 1977 gold Ford . . . on Lebanon Avenue near Sir Lawrence Drive in St. Clair County, Illinois with a wanton disregard for the safety of persons or property. . . ." Citing **People v. Griffin**, 36 Ill.2d 430, 223 N.E.2d 158 (1967), the Court held that the above information was not sufficiently definite to bar further prosecution for the same acts.

People v. Greco, 336 Ill.App.3d 253, 783 N.E.2d 201 (2d Dist. 2003) The Appellate Court held that a police officer's observation of a driver weaving within a single lane is sufficient to justify a traffic stop. The court overruled **People v. Manders**, 317 Ill.App.3d 337, 740 N.E.2d 64 (2d Dist. 2000), which held that observing a motorist weaving within her own lane as she attempted to pass a truck did not justify a suspicion that a traffic offense was occurring.

People v. Delay, 70 Ill.App.3d 712, 388 N.E.2d 1316 (4th Dist. 1979) The offense of using a false name on a vehicle registration or title application (Ch. 95½, ¶4-105) does not require the mental state of willfulness, but is instead an absolute liability offense.

People v. Hagen, 191 Ill.App.3d 265, 547 N.E.2d 577 (4th Dist. 1989) The Court upheld the statute which prohibits tinted windows (Ch. 95½, ¶12-503(a)). See also**, People v. Strawn**, 210 Ill.App.3d 783, 569 N.E.2d 269 (4th Dist. 1991) (defendant was properly convicted though her automobile, which was registered in Illinois, was purchased in a state which permitted tinted windows; furthermore, the police may stop a vehicle solely for a violation of ¶12-503(a)).

People v. Walter, 335 Ill.App.3d 171, 779 N.E.2d 1151 (3d Dist. 2002) Under Supreme Court Rule 504, "whenever practicable" the arresting officer must set the first appearance in a traffic case not less than 14 days but within 60 days of the arrest. Where the officer sets a first appearance date outside this period, the trial court need not dismiss the charge for lack of jurisdiction if the State establishes that it was impracticable to comply with the rule's time limitations. In determining whether it was practicable to set the first appearance date within the 14 to 60-day period, neither the officer's intent nor prejudice to the defendant are relevant considerations. If the trial court determines that it was "not impracticable" to set the first appearance within Rule 504's specified period, an order dismissing the charges will not be disturbed unless the trial court abused its discretion. Where defendant was arrested for DUI on December 15, 2001, and both the arresting officer and jail personnel set the first appearance for "January 23, 2001," the trial court did not abuse its discretion by dismissing the charges upon the State's failure to present evidence that setting a time within the limits of Rule 504 was not practicable. Noting that the defendant did not cause the "scrivener's errors," the court stated, "Clearly, defendant was not obliged to guess what date the officers truly intended for him to appear in court or to bring the officers' errors to the court's attention before seeking a dismissal of the charge."

People v. Alfonso, 191 Ill.App.3d 963, 548 N.E.2d 452 (1st Dist. 1989) Defendant was arrested for DUI and the arresting officer set the first appearance date for 13 days after the arrest. On that date defendant appeared and requested a continuance to obtain an attorney. The cause was continued, and on the next date defense counsel moved to dismiss the charges pursuant to Rule 504, which provides that the appearance date shall be set "not less than 14 days but within 49 days (now 60 days) after the date of the arrest, whenever practicable." The arresting officer testified that he set the appearance date on the 13th day after the arrest because that was his first scheduled court date following the arrest and his next scheduled court date would have been 48 days after the arrest, but he did not set the appearance for that day because he thought it should be scheduled before the 46-day statutory summary license suspension deprived defendant of his driver's license. The trial judge granted the motion to dismiss, finding that: (1) the appearance date was not set within the time period required under Rule 504, and (2) it was practicable to have done so. The judge noted that the officer, in good faith, set a date outside the limits of the Rule because he was concerned about the

summary suspension. The Appellate Court stated that if an appearance date is not set within the time limits of the Rule, the State is required to establish it was impracticable to do so. Furthermore, the trial judge's determination regarding impracticability will not be disturbed absent an abuse of discretion. The Court found that the trial court did not abuse its discretion. The Court noted that the "good intentions of the arresting officer or the convenience of the parties are irrelevant where, as here, it was practicable to set the appearance date within 14 to 49 days after the date of the arrest."

People v. Worthington, 108 Ill.App.3d 932, 439 N.E.2d 1101 (3d Dist. 1982) Pursuant to Ch. 95½, ¶16-102, a municipality may prosecute a traffic violation if written permission is given by the State's Attorney. Here, the required permission was given. See also, **People v. Koetzle**, 40 Ill.App.3d 577, 352 N.E.2d 433 (5th Dist. 1976).

People v. Angell, 184 Ill.App.3d 712, 540 N.E.2d 1106 (2d Dist. 1989) The driver of a vehicle may be convicted of illegal transportation of liquor under Ch. 95½, ¶11-502(a) without proof that he knew of the open container of alcohol in the passenger section. See also, **People v. Graven**, 124 Ill.App.3d 990, 464 N.E.2d 1131 (4th Dist. 1984). Contra, **People v. DeVoss**, 150 Ill.App.3d 38, 501 N.E.2d 840 (3d Dist. 1986).

People v. Brant, 82 Ill.App.3d 847, 403 N.E.2d 282 (4th Dist. 1980) The evidence was not sufficient to prove defendant guilty of failure to reduce speed to avoid an accident. To sustain this charge, the State must prove that defendant drove "carelessly" and "failed to reduce speed to avoid the accident." Here, there was no evidence that the defendant drove carelessly, and the Court refused to infer carelessness based upon the defendant's intoxication. Additionally, there was no evidence that defendant failed to reduce speed to avoid the accident. The Court rejected the State's argument that since defendant hit the car he must not have reduced his speed because this would mean that "anyone involved in an accident could properly be convicted for failure to reduce speed to avoid an accident."

People v. Thomas, 277 Ill.App.3d 214, 660 N.E.2d 184 (1st Dist. 1995) The Court held sua sponte that the evidence was insufficient to prove reckless homicide. Defendant agreed to perform an act of oral sex on the decedent for $20. However, the decedent demanded that defendant return $10 because she had insisted on using a condom. The decedent grabbed defendant's collar, displayed an open knife, and insisted that she return his money. Defendant escaped the decedent's grasp, got into the decedent's car and locked the doors. The decedent jumped on the hood, with the knife still in his hand. Defendant drove the car a short distance, until it struck something and turned over. The decedent was crushed by the weight of the auto. Because defendant reasonably feared for her life after she was threatened, it was reasonable for her to try to escape. Thus, "her actions did not constitute reckless homicide."

Cumulative Digest Case Summaries **§50-1**

McElwain v. Secretary of State, 2015 IL 117170 (No. 117170, 9/24/15)

625 ILCS 5/11-501.6(a), which provides that a driver who is arrested or ticketed relating to a serious injury in a traffic accident consents to blood, breath or urine testing to detect the presence of alcohol or drugs, qualifies for the "special needs" exception to the Fourth Amendment only where the testing is performed at the scene of the accident. Section 11-501.6(a) was applied unconstitutionally where police asked defendant to come to the police station some 48 hours after the accident, questioned him about his use of marijuana, issued a ticket for failure to yield, and asked him to take a chemical test.

People v. Boeckmann & Maschhoff, 238 Ill.2d 1, 932 N.E.2d 998 (2010)

1. Due process is not violated by 625 ILCS 5/6-206(a)(43), which requires suspension of driving

privileges for three months where an underage person receives supervision for the offense of unlawful consumption of alcohol while under the age of 21. (See **STATUTES**, §48-3(a)).

2. The court rejected the defendant's argument that the Secretary of State has discretion whether to suspend a person's driving privileges for underage consumption of alcohol. Because 625 ILCS 5/6-206 contains a specific suspension period for the driving privileges of a person who receives court supervision for underage drinking, the court concluded that the legislature intended to make revocation mandatory.

People v. Close, 238 Ill.2d 497, 939 N.E.2d 463, 2010 WL 4126454 (2010)

The elements of driving with a revoked license (625 ILCS 5/6-303) include: (1) the act of driving on a highway, (2) while the driver's license is revoked. Although §6-303 excepts from the definition of the offense driving that is "specifically allowed by a judicial driving permit, family financial responsibility driving permit, probationary license to drive, or a restricted driving permit," an exception which withdraws specified acts from the operation of a statute is not an element of the offense but a matter of defense.

Thus, the possible application of a restricted driving permit is not an element of driving with a revoked license, but a matter of defense which the accused may raise.

People v. Gaytan, 2015 IL 116223 (No. 116223, 5/21/15)

Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous concerning whether the prohibition applies to all materials which obstruct any part of the license plate, including the ball hitch at issue here, or only to materials which attach to and obstruct the plate. In the course of its holding, the court noted that accepting the State's interpretation of §3-413(b) would render a "substantial amount of otherwise lawful conduct illegal," including transporting electric scooters or wheelchairs on carriers on the back of a car, using bicycle racks, and towing rental trailers.

Applying the rule of lenity, the court concluded that §3-413(b) prohibits only objects which are physically connected or attached to the license plate and which obstruct the visibility and legibility of the plate. However, the court encouraged the General Assembly to clarify whether equipment and accessories attached to a vehicle near the license plate are restricted.

2. Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. In **Heien v. North Carolina**, 474 U.S. , 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the court concluded that the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

3. The court rejected the argument that **Heien** should be rejected as a matter of state law. Illinois follows the "limited lockstep" doctrine when interpreting the search and seizure provision of the Illinois Constitution. Under this doctrine, the court presumes that the drafters of the Illinois Constitution intended the State search and seizure provision to have the same meaning as the Fourth Amendment, unless there is a reason to adopt a different meaning. Although Illinois has a more broad exclusionary rule than does federal law, **Heien** involves not the exclusionary rule but whether there is a Fourth Amendment violation in the first place. Because **Heien** concluded that the Fourth Amendment is not violated where an officer executes a stop due to a reasonable, mistaken belief that a statute prohibits the conduct in question, no issue concerning the Illinois exclusionary rule is presented.

(Defendant was represented by Assistant Defender Larry Bapst, Springfield.)

People v. Geiler, 2016 IL 119095 (No. 119095, 7/8/16)

The mandatory/directory distinction involves the question of whether the failure to comply with a particular procedural step will or will not invalidate a governmental action. Courts presume that procedural commands to government officials are directory. The presumption is overcome and a provision becomes mandatory only if: (1) negative language in the statute or rule prohibits further action where there is noncompliance; or (2) the right the statute or rule protects would generally be injured by a directory reading.

Illinois Supreme Court Rule 552 governs the processing of traffic citations and imposes an obligation on the arresting officer to transmit specific portions of the ticket to the circuit court within 48 hours after the arrest. Here the arresting officer gave defendant a speeding ticket on May 5 but did not transmit the ticket to the circuit court until May 9, clearly beyond the 48 hour time limit. There was no dispute that Rule 552 was violated; the only issue was the appropriate consequences for the violation.

Rule 552 merely provides that the arresting officer shall transmit the ticket to the circuit court within 48 hours. It does not specify any consequences for the violation or contain nay negative language prohibiting prosecution or further action where there has been noncompliance. Thus the negative language exception does not apply.

Rule 552 is designed to ensure judicial efficiency and uniformity in processing tickets. A directory reading of Rule 552 would not generally injure judicial efficiency or uniformity. In this case, there was no evidence that the delay in transmitting the citations impaired the trial court's management of its docket. There was also no indication that the delay would ordinarily prejudice the rights of a defendant. A defendant's first appearance on a traffic citation must be set within 14 and 60 days after arrest. Thus even if the citation is not transmitted within 48 hours, it may still be filed before defendant's first court appearance and he would be unaffected by the delay.

The court therefore concluded that Rule 552 is directory and no specific consequence is triggered by noncompliance. But a defendant may still be entitled to relief if he can demonstrate that he was prejudiced by the violation.

People v. Hackett, 2012 IL 111781 (No. 111781, 7/6/12)

1. 625 ILCS 5/11-709(a) provides that where a roadway has been divided into two or more clearly marked lanes, a vehicle "shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Under **People v. Smith**, 172 Ill. 2d 289, 665 N.E.2d 1215 (1996), §11-709(a) imposes two separate requirements: (1) that the motorist drive "as nearly as practicable entirely within one lane," and (2) that the motorist not move from a lane of traffic without determining that the movement can be made safely.

The Appellate Court erred by finding that a driver commits the offense of improper lane usage only if he or she drives an "appreciable distance in more than one lane of traffic." The court stated, "We now make clear that a distance a motorist travels while violating the proscription of section 11-709(a) is not a dispositive factor in the applicable analysis." Thus, a motorist who crosses a lane line and fails to drive as nearly as practicable within one lane has violated §11-709(a) without regard to the distance traveled.

2. A deputy who saw the defendant twice deviate from his own lane of travel into another lane for no obvious reason had sufficient basis to suspect that the defendant had committed the offense of improper lane usage. Therefore, an investigatory stop was justified to determine if it was practicable for defendant to have stayed in one lane. The trial court's order granting defendant's motion to suppress was reversed and the cause was remanded for further proceedings.

People v. Jackson, 2013 IL 113986 (No. 113986, 2/7/13)

When defendant was 15, he was charged with the offense of driving under the influence of alcohol. Although he had never applied for a driver's license, the Secretary of State created a driver's license in his

name and then suspended it. Approximately 18 months later, defendant was convicted of driving while license suspended.

Several years later, defendant applied for an Illinois driver's license under his correct social security number and name, but without the middle initial which had been used by the Secretary of State in creating the license nine years earlier. When applying for this license, defendant answered in the negative when asked whether his driver's license was suspended, revoked, cancelled or refused.

The Secretary of State issued a new license. Two years later, defendant renewed the license without any objection by the Secretary of State.

Defendant was subsequently charged with driving on a suspended license. The trial court found that 625 ILCS 5/6-303(a) and (d) (driving with a suspended license) was unconstitutional as applied to this defendant. The trial judge concluded that the statute denied due process in that it created an absolute liability offense and precluded defendant from introducing evidence that he had not committed fraud in obtaining the second license.

The Supreme Court found that because the issue could have been decided on nonconstitutional grounds, the trial court erred by finding the statute unconstitutional. The elements of the offense of driving while license suspended are: (1) an act of driving a motor vehicle on a highway, and (2) the fact that the defendant's driver's license has been revoked or suspended. The parties agreed that once the State presents evidence to show that the defendant's license was suspended or revoked, defendant may present evidence of the second license to support his defense that his driving privileges were not suspended or revoked. In response, the State could assert that defendant's license was not restored in compliance with the provisions of the Code, but was instead obtained through fraud. Should the trier of fact find that defendant restored his license in compliance with the relevant procedures in the Vehicle Code and did not do so by fraud, the State would have failed to prove the second element of the offense.

Because defendant would be entitled to present evidence concerning his application for a second license, and the trier of fact would be required to determine whether the defendant misled authorities into reinstating his driving privileges, the due process violation identified by the trial court did not exist. Thus, defendant's motion to declare §6-303(a) and (d) unconstitutional was improperly granted. The trial court's order was vacated and cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

People v. One 1998 GMC et al., 2011 IL 110236 (No. 110236, 12/30/11)

1. The court rejected the argument that a prior version of the Illinois forfeiture statute (720 ILCS 5/36-1 *et. al.*) violated due process because it did not require a prompt probable cause hearing after a vehicle is seized. (Public Act 97-544 (eff. 1/1/12) amended the forfeiture act to require a timely, post-seizure probable cause hearing).

Generally, due process compels the government to provide notice and an opportunity to be heard before a person is deprived of property. This general rule is subject to an exception, however, where the property is mobile and could be moved, destroyed or concealed if advance warning of the confiscation is given. Furthermore, the claimants here did not argue that a pre-detention hearing was required, but only that they were entitled to a prompt probable cause hearing after the seizure.

The court rejected the argument that where a forfeiture statute provides a prompt, meaningful post-seizure hearing, due process requires that there also be a probable cause hearing. The court noted that a probable cause determination is made by the police at the scene and that in most cases, there will be a prompt probable cause determination in connection with the underlying criminal prosecution. Although that probable cause hearing does not necessarily concern the identity of the vehicle or whether it was used to commit a crime, it is unlikely that police will be mistaken about the identity of the vehicle or its connection to the crime, especially for the type of offenses involved here (aggravated DUI and driving with a revoked license).

The court also noted that the claimant has an early opportunity to contest any defects in the proceeding by bringing a motion to dismiss under §2-615 of the Code of Civil Procedure, and that the

forfeiture proceeding continues only if the allegations survive the motion to dismiss.

2. Whether delay in a forfeiture hearing denies due process is determined by applying the **Barker v. Wingo** factors which control whether the right to a speedy trial has been violated. The court concluded that in this case, application of the **Barker** factors show that no due process violation occurred.

The first factor is the length of the delay. Here, the only reason there was no prompt hearing, as the statute required, was that the claimants requested several continuances and then challenged the constitutionality of the statute. Thus, the delay was entirely attributable to the claimants.

The second **Barker v. Wingo** factor concerns the reason for the delay. Because the claimants were responsible for the delay, this factor also favors the State.

The third factor is whether the claimant asserted the right to a judicial hearing. The court concluded that this factor also favored the State because the claimants failed to seek an early return of the vehicle by requesting discretionary remission of the forfeiture. Instead, they filed several motions for continuance and then challenged the constitutionality of the statute.

The final factor is whether the claimants were prejudiced by the delay. Here, the claimants failed to allege any prejudice.

People v. Rizzo, 2016 IL 118599 (No. 118599, 6/16/16)

The court rejected the arguments that the proportionate penalties clause and due process are violated by the prohibition of supervision for aggravated speeding (i.e., more than 40 mph in excess of the speed limit (625 ILCS 5/11-601.5(b)). The trial court's finding of unconstitutionality was reversed and the cause remanded for further proceedings.

People v. Ziobro, 242 Ill.2d 34, 949 N.E.2d 631 (2011)

Supreme Court Rule 504 requires an arresting officer or the clerk of the court to set the first appearance on a traffic offense "not less than 14 days but within 60 days after the date of the arrest, whenever practicable." This rule is violated when the time limitations have not been complied with and there has been no showing of impracticability. The time limitations are directory, as no specific consequence is triggered by the failure to comply with the rule. Dismissal for violation of the rule is therefore not automatic. **Village of Park Forest v. Fagan**, 64 Ill.2d 264, 356 N.E.2d 59 (1976).

The Code of Criminal Procedure sets forth 11 grounds for dismissal of a charge. 725 ILCS 5/114-1(a). A Rule 504 violation is not listed among these grounds. Circuit courts also have the inherent authority to dismiss cases stemming from the obligation to prevent a derivation of due process or miscarriage of justice. A mere violation of Rule 504 is not sufficient grounds, standing alone, to dismiss charges. Therefore, a court abuses its discretion in dismissing due to a Rule 504 violation without requiring a showing of prejudice to the defendant.

Because the circuit court dismissed DUI and other traffic charges at defendant's first court appearance for failure to comply with the time limitations of Rule 504 without any showing of prejudice resulting to the defendant, the court abused its discretion.

On remand, the circuit court will be bound by Public Act 96-694, effective 1/1/10 (adding 625 ILCS 5/16-106.3), which prohibits circuit courts from dismissing DUI charges due to a violation of Supreme Court Rules 504 and 505. Section 4 of the Statute on Statutes (5 ILCS 70/4) governs where a statute is otherwise silent as to its retroactive effect. Section 4 prohibits retroactive application of substantive provisions and provides that procedural law changes apply to ongoing proceedings. This new provision barring dismissal as a remedy for a 504 or 505 violation is procedural as it does not affect a vested right. Therefore, it controls on the question of the court's authority to dismiss the DUI charges on remand.

People v. Elliott, 2012 IL App (5th) 100584 (No. 5-10-0584, 11/1/12)

Within 90 days of notice of a statutory summary suspension of a driver's license, a driver may petition the court for a hearing to contest the statutory suspension. The summary suspension statute provides

that "[u]pon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension." 625 ILCS 5/2-118.1(b). Giving these words of the statute their plain, ordinary meaning, a rescission of the suspension does not merely terminate the suspension; it has the effect of undoing the suspension so that it never existed.

Defendant was charged with driving on a suspended license after his license was summarily suspended, but while a petition for rescission of the suspension was pending. That petition was ultimately granted and the court ordered rescission of the suspension. Because the suspension was void at its inception as a result of the order of rescission, the Appellate Court reversed defendant's conviction for driving on a suspended license.

People v. Girot, 2013 IL App (3d) 110936 (No. 3-11-0936, 9/25/13)

The Illinois Vehicle Code requires that all motor vehicles exhibit at least two lighted tail lamps that throw a red light visible for at least 500 feet in the reverse direction. 625 ILCS 5/12-201(b). The Code also provides that "[u]nless otherwise expressly authorized by this Code, all other lighting or combination of lighting on any vehicle shall be prohibited." 625 ILCS 5/12-212.

There was a chip the size of a dime or a nickel in the red plastic lens that covered the taillight of defendant's vehicle. As a result, the taillight emitted a red and white light. This was not authorized by the Code, and provided reasonable suspicion authorizing a police officer to stop defendant's vehicle to investigate the violation.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

People v. Gonzalez-Carrera, 2014 IL App (2d) 130968 (No. 2-13-0968, 9/2/14)

1. 625 ILCS 5/12-201(b) provides that all motor vehicles other than motorcycles must have at least two lighted tail lamps which are mounted on the left rear and right rear of the vehicle "so as to throw a red light visible for at least 500 feet in the reverse direction." 625 ILCS 5/12-201(c) provides that such tail lights must be illuminated whenever the vehicle's headlights are on. Under §12-201(b), a vehicle's headlights must be illuminated from sunset to sunrise, when rain, snow, fog or other conditions require the use of windshield wipers, and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 1000 feet.

2. The court concluded that the officer lacked a reasonable basis to suspect that defendant violated 625 ILCS 5/12-201(b) because the red tail light cover on his vehicle contained a hole which allowed white light to show through when the brakes were activated. Section 12-201(b) requires that tail lights be illuminated from sunset to sunrise, when conditions require the use of windshield wipers, and when persons and vehicles are not clearly discernible at a distance of 1000 feet. Because the stop occurred at 3:40 p.m. and the citation indicated that the conditions were clear and dry, §12-201(b) did not require the use of two red tail lights.

Under these circumstances, the officer lacked a reasonable basis to believe that a traffic offense was occurring. The order granting defendant's motion to suppress was affirmed.

3. The court concluded that because §12-201(b) was not applicable, it need not determine whether **People v. Girot**, 2013 IL App (3rd) 110936 was correctly decided. **Girot** found that §12-201(b) was violated where defendant drove his vehicle after dark with a hole in the red tail light cover which allowed both red and white light to be visible.

People v. Grandadam, 2015 IL App (3d) 150111 (No. 3-15-0111, 12/2/15)

The offenses of driving while license revoked, operating an uninsured motor vehicle, and operating a motor vehicle without valid registration all require that the State prove that the defendant was operating a "motor vehicle." A "motor vehicle" is defined as a vehicle which is self-propelled or propelled by electric power obtained from overhead wires, "except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles." 625 ILCS 5/1-146. A "low-speed gas

bicycle" is a two or three-wheeled device with "fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15.

The court concluded that the State failed to prove beyond a reasonable doubt that defendant was operating a "motor vehicle." Defendant was riding a gas-powered bicycle which used both a gasoline motor and pedal power. Officers testified that they estimated defendant to be traveling at approximately 15 miles an hour, and that he was stopped for failing to obey a stop sign and for making an illegal left turn. After he was stopped, defendant stated that the bicycle could travel between 25 and 30 miles an hour and that he had once gotten it up to 41 miles per hour. The officers did not know whether the latter speed was reached while riding downhill.

Defendant testified that the gas motor provided .75 horsepower, that the bicycle must be pedaled to eight to 10 miles an hour before the motor can be activated, and that when using just the motor the bicycle's top speed was 17 miles per hour. The State presented no evidence concerning the bicycle's capabilities except for the statements defendant made to the officers after he was stopped.

The court concluded that the State presented insufficient evidence to allow a reasonable trier of fact to conclude beyond a reasonable doubt that the bicycle was a "motor vehicle" rather than a "low-speed gas bicycle." The court stressed that defendant's statements to police did not distinguish between the bicycle's capabilities when using only the motor and when using the pedals to assist. In addition, defendant's unrebutted testimony stated that when using only the motor, the maximum speed was 17 miles per hour, which was three miles below the maximum speed for "low-speed gas bicycles." Under these circumstances, the evidence was insufficient to prove beyond a reasonable doubt that defendant's bicycle was a "motor vehicle."

The court rejected the argument that the trial court could infer that defendant's statements after the stop meant that the bicycle could reach speeds of 25 to 30 miles per hour using only the motor. While a reviewing court will allow all reasonable inferences, the only evidence concerning the bicycle's speed when powered solely by the motor was defendant's testimony at trial. Defendant's general statements to the officers are "simply not probative of the method by which the bicycle" reached speeds in excess of 20 miles per hour.

The convictions for driving while license revoked, driving an uninsured motor vehicle, and driving without valid registration were reversed.

People v. Haywood, 407 Ill.App.3d 540, 944 N.E.2d 846 (2d Dist. 2011)

In the course of holding that a traffic stop was not supported by a reasonable suspicion of criminal activity, the court noted that 625 ILCS 5/11-804(d), which requires, prohibits, or permits the use of turn signals depending on the circumstances, permits a driver to activate a turn signal without intending to turn unless the vehicle is parked or disabled or the driver is using the turn signal as a "do pass" signal. Furthermore, because §11-804 mandates the minimum (but not the maximum) distance for activating a signal before a turn, and because several opportunities to turn might be located within a short distance, the statute might require a motorist to activate a signal and pass an opportunity to turn.

The court also concluded that 625 ILCS 5/12-208(b), 625 ILCS 5/12-212(b) and 625 ILCS 5/12-212(c), which deal with flashing lights on a vehicle, were intended to specify the equipment which must be on a vehicle and not to regulate drivers' conduct. Therefore, the officer could not have reasonably believed that any of the above sections prohibited driving past three opportunities to turn with a signal activated. (See **SEARCH & SEIZURE**, §44-12(a)).

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

People v. Isaacson, 409 Ill.App.3d 1079, 950 N.E.2d 1183 (4th Dist. 2011)

The punishment for driving on a suspended license is increased to a Class 4 felony when a person is convicted of a violation of the driving-while-license-suspended statute "during a period of summary suspension imposed pursuant to Section 11-501.1 when the person was eligible for a MDDP [monitoring

device driving permit]." 625 ILCS 5/6-303(c-3). This provision applies to individuals who are convicted of driving on a suspended license when the individual was eligible for an MDDP at the time that the suspension was imposed, rather than at the time of the violation.

This interpretation is consistent with the purpose of MDDPs, which is to provide driving privileges in a manner consistent with public safety. 625 ILCS 5/6-206.1. The statute punishes those who had the opportunity to get an MDDP and drive in a manner consistent with public safety, but drove anyway during the period of suspension without one. It would be absurd to exempt from this punishment those who lost the ability to obtain an MDDP by the time of the violation, allowing them to receive a less severe punishment than those who did not lose the privilege.

(Defendant was represented by Assistant Defender Janieen Tarrance, Springfield.)

People v. McPeak, 2012 IL App (2d) 110557 (No. 2-11-0557, 11/2/12)

1. The State bears the burden of proving all elements of the offense beyond a reasonable doubt. Where a statutory exception to an offense is "part of the body of the substantive offense," the State's burden includes disproving the exception beyond a reasonable doubt. Even where an exception appears within the statutory definition of an offense, however, it is "part of the body" of the offense only if it is "so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception."

By contrast, a statutory exception which merely withdraws certain acts or persons from the operation of the statute is not part of the body of the offense. The defense has the burden of proof concerning such exceptions.

2. 625 ILCS 5/6-303(a) defines the offense of driving with a suspended or revoked license as driving or being in actual physical control over a motor vehicle while one's license is revoked or suspended, "except as may be specifically allowed by" statutes authorizing a "monitoring device driving permit," which authorizes the offender to drive upon installation of a device which prevents the vehicle from starting if the driver's breath alcohol exceeds a specified level. The Secretary of State must issue such a permit to first offenders unless the offender declines.

The court concluded that the MDDP provision merely withdraws drivers who receive an MDDP from the scope of the statute defining the offense of driving with a revoked or suspended license, and that the provision is therefore not part of the body of the offense. Thus, the State need not present evidence affirmatively showing that the defendant was not granted an MDDP. Because the defendant did not raise as a defense that she had been issued and was driving in compliance with an MDDP, the State met its burden of proof concerning the offense despite its failure to present evidence whether defendant had been granted an MDDP.

(Defendant was represented by Assistant Defender Kathleen Hamill, Elgin.)

People v. Moises, 2015 IL App (3d) 140577 (No. 3-14-0577, 8/24/15)

1. 20 ILCS 2610/30(e) provides that a stop resulting from a suspected violation of certain provisions of the Illinois Vehicle Code "shall be video and audio recorded." The recordings are required to be maintained for at least 90 days.

The trial judge found that by ordering defendant to perform field sobriety tests in an area that could not be seen by the camera, the officers engaged in the equivalent of destroying or losing the videotape on which a field sobriety test was recorded. The judge imposed a discovery sanction prohibiting deputies from testifying about any part of the traffic stop where the arresting officer took defendant off-camera, including the field sobriety tests.

The Appellate Court held that the trial court erred by entering the sanction order. First, no discovery violation occurred where the State disclosed the videotape from the traffic stop in response to defendant's request. The court rejected the argument that the failure to record a traffic stop is the equivalent of destroying a tape after it is made.

Second, the police are not required to conduct field sobriety tests within view of a squad car camera. The majority opinion noted that protecting the safety of both the officer and the driver may require that field sobriety testing be conducted away from the camera.

The trial court's sanction order against the State was reversed and the cause remanded for further proceedings.

2. In a concurring opinion, Justice Lytton noted that even the prosecutor "lamented" that the reasons for conducting the field testing outside the camera view were unknown. Because the record did not disclose whether the officer's reasons for conducting the field sobriety tests out of the camera's view were sufficient to overcome the legislature's intent that video and audio must be captured during traffic stops, Justice Lytton would have remanded the cause for a hearing to consider any reasons offered by the State for conducting the sobriety testing outside the view of the camera.

3. In dissent, Justice Holdridge stated that the legislative intent of §30(e) is to require that traffic stops be recorded, in order to provide objective evidence of the incident and thereby assist in the truth-seeking process. Because such legislative intent is thwarted where a police officer fails to make the recording, Justice Holdridge would hold that the trial court did not abuse its discretion by ordering discovery sanctions.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010)

A conviction for failing to report an accident within one-half hour of the accident requires the State to prove: (1) defendant was the driver of a vehicle involved in an accident; (2) the accident resulted in death or personal injury; (3) defendant knew the accident occurred; (4) defendant knew the accident involved another person; (5) defendant failed to immediately stop and remain at the scene until he performed his duty to give information and render aid; and (6) defendant failed to report the accident within one-half hour after the accident at a nearby police station or sheriff's office. 625 ILCS 5/11-401(b).

At defendant's trial for failing to report an accident within one-half hour of the accident, the State offered no evidence of, and the jury was not instructed that it needed to find, the sixth element that defendant had failed to report the accident within a half hour. Therefore the court reduced defendant's convictions to the lesser-included offense of leaving the scene of an accident. 625 ILCS 5/11-401(a).

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

People v. Scarbrough, 2015 IL App (3d) 130426 (No. 3-13-0426, 5/13/15)

1. Under 730 ILCS 5/5-6-1(j), a defendant who has been charged with driving while his license is revoked (625 ILCS 6-303(a)) is ineligible for supervision if: (1) his license was revoked because of a violation of 625 ILCS 11-501 (driving under the influence); and (2) he has a prior conviction under section 6-303 within the last 10 years.

Defendant entered a blind guilty plea to driving on a revoked license. The trial court sentenced him to 12 months of conditional discharge with 30 days in jail, finding that he was ineligible for supervision. On appeal, defendant argued that he was eligible for supervision for two reasons: (1) his license had not been revoked because of a section 11-501 violation; and (2) his prior conviction under section 6-303 had not occurred within the last 10 years. The Appellate Court upheld defendant's sentence, rejecting both of his arguments.

2. Defendant's license had been revoked because of a bond forfeiture conviction based on an underlying DUI case. The Court held that for purposes of the Illinois Driver Licensing Law (625 ILCS 5/6-100 to 6-1013) bond forfeitures constitute convictions. Defendant's bond forfeiture in a DUI case was thus the equivalent of a conviction for DUI. Accordingly, his license had been revoked because of a violation of section 11-501.

3. The Court also rejected defendant's argument that the prior conviction must have occurred within 10 years of the time defendant pled guilty in the present case. Instead, the prior conviction must have occurred within 10 years of the time defendant was charged with the present offense. Here, defendant was

charged with the current offense within 10 years from the date he was convicted of the previous 6-303 offense, and thus was not eligible for supervision.

(Defendant was represented by Assistant Defender Dimitri Golfis, Ottawa)

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§50-2
Driving Under the Influence

§50-2(a)
Generally

People v. Bartley, 109 Ill.2d 273, 486 N.E.2d 880 (1985) The Court upheld DUI roadblocks. The Court balanced the public interest (the serious problem of drivers under the influence of alcohol) against the resulting intrusions, and held that roadblocks are constitutionally acceptable when the discretion of the officers conducting the roadblock is limited and the intrusion is minimal. The Court listed several factors to be considered in determining whether a roadblock is constitutionally permissible. First, the potential for arbitrary enforcement or unbridled discretion is reduced when: (1) the decision to establish a roadblock is selected by supervisory-level personnel, (2) vehicles are stopped in a "pre-established, systematic fashion," and (3) there are "guidelines in the operation of the roadblock." The Court also found that the anxiety to motorists caused by a roadblock is allayed if: (1) "there is a sufficient showing of the official nature of the operation and it is obvious that the roadblock poses no safety risk," and (2) there is "advance publicity of the intention of the police to establish DUI roadblocks, without designating specific locations at which they will be conducted." Although the roadblock here was "not a model roadblock, the subjective intrusion here was sufficiently limited to pass constitutional muster." See also, **People v. Conway**, 135 Ill.App.3d 887, 482 N.E.2d 437 (4th Dist. 1985).

City of Naperville v. Watson, 175 Ill.2d 399, 677 N.E.2d 955 (1997) A person need not drive to be in "actual physical control" of a vehicle under 625 ILCS 5/11-501(a). A person who is "sleeping it off" in a parked car may be in "actual physical control" of a vehicle.

People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983) The Court upheld the validity of Ch. 95½, ¶11-501(a)(1) (operating a motor vehicle with a blood alcohol concentration in excess of 0.10%) over the contention that it violates due process by creating a mandatory presumption of guilt and shifting the burden of persuasion to the defendant. The Court held that there are no presumptions in the above statute. Instead, the State must show that the defendant was operating a motor vehicle and that his blood alcohol concentration was over 0.10%.

People v. Fate, 159 Ill.2d 267, 636 N.E.2d 549 (1994) The defendant was charged with DUI under Ch. 95½, ¶11-501(a)(5) (625 ILCS 5/11-501), which prohibits driving a vehicle with "any amount" of a substance in one's blood or urine "resulting from the unlawful use" of cannabis or a controlled substance. Defendant claimed that the statute violated due process in that it created a per se prohibition of driving, without any relationship to actual impairment. The Supreme Court disagreed, finding that considering the vast number of illegal drugs, the difficulty in measuring their precise concentration and variations in impairment between various drugs and individuals, the statute was a reasonable attempt to protect the safety of Illinois highways.

People v. Johnson, 218 Ill.2d 125, 842 N.E.2d 714 (2005) Although a DUI suspect's refusal to take a breath

alcohol test may be admitted to show consciousness of guilt, the prosecutor erred by arguing in both opening and closing argument that defendant's refusal to take the test represented a failure to take advantage of an opportunity to "prove" that he was not guilty of DUI. However, the error was harmless.

People v. Jones, 214 Ill.2d 187, 824 N.E.2d 239 (2005)625 ILCS 5/11-501.2(c)(2) provides:
Notwithstanding any ability to refuse under this Code to submit to these tests or any ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both.

The Supreme Court held that §11-501.2 does not grant a statutory right to refuse chemical testing in a situation not involving the death or personal injury of another. Defendant argued that by authorizing nonconsensual chemical testing in situations involving death or personal injury, the legislature intended to recognize a right to refuse testing in other situations. The Court reasoned that: (1) prior to the enactment of §11-501.2(c)(2), it was well-settled that nonconsensual chemical testing of a DUI arrestee was permissible in all DUI situations; (2) following principles of statutory construction, the Court would not interpret a statute to effect a change in settled law unless its terms clearly require such a construction; and (3) the language of §11-501.2(c)(2) does not clearly create a right to refuse testing. The Court added that its holding "does not give law enforcement officers unbridled authority to order and conduct chemical tests."

People v. McClure, 218 Ill.2d 375, 843 N.E.2d 308 (2006) 625 ILCS 5/2-118.1(b), which requires that a request for a statutory summary suspension hearing must be filed within 90 days after notice of the suspension is served, should be construed in accordance with 735 ILCS 5/13-217, which provides that an action which is voluntarily dismissed can be refiled within one year. Thus, where the defendant voluntarily dismissed his timely request for a summary suspension hearing, he was entitled to refile the petition within one year.

People v. McKown, 226 Ill.2d 245, 875 N.E.2d 1029 (2007) The court concluded that evidence of horizontal gaze nystagmus (HGN) is subject to the **Frye** standard for admissibility of scientific evidence, and remanded the cause for a **Frye** hearing.

People v. Every, 184 Ill.2d 281, 703 N.E.2d 897 (1998) 625 ILCS 5/11-501.1(a), which authorizes an Illinois law enforcement officer who is investigating a potential DUI to complete his investigation in an adjoining state, is constitutional. Section 11-501.1 does not purport to give an Illinois law enforcement officer authority to make an arrest or otherwise exercise his official powers in an adjoining state, but merely allows an officer to obtain evidence under the Illinois "implied consent" statute, which provides that persons who drive in Illinois impliedly agree to allow chemical testing of their blood for alcohol content.

People v. Lavallier, 187 Ill.2d 464, 719 N.E.2d 658 (1999) Under the plain language of 625 ILCS 5/11-501(d)(1)(C), which enhances DUI to aggravated DUI when a driver causes physical injury in an accident, only one aggravated DUI conviction is authorized even if several persons suffer severe bodily injury. “[T]he focus of section 11-501(d)(1)(C) is on punishing those who both drive under the influence of alcohol in violation of paragraph (a) and have an accident resulting in injuries to another, rather than on punishing the offender for each individual injured in the accident."

People v. Coleman, 111 Ill.2d 87, 488 N.E.2d 1009 (1986) The defendant pleaded guilty to DUI and requested supervision. Three years earlier, defendant had pleaded guilty to DUI and received supervision.

Ch. 38, ¶1005-6-1(d) prohibits supervision to a defendant charged with DUI if he has received supervision for the same offense within the previous five years. The trial judge found that since ¶105-6-1(d) became effective after the defendant's prior offense, but before his second offense, it was an ex post facto law. The trial judge also held that ¶1005-6-1(d) violated equal protection. The defendant was given supervision, and the State appealed. The Supreme Court held that ¶1005-6-1(d) was not ex post facto law as to this defendant. The statute did not increase the penalty imposed for an offense which occurred prior to its effective date, but merely created an enhanced penalty for offenses occurring after its effective date. Furthermore, the defendant had adequate notice at the time of his second offense that being convicted of DUI within five years of his prior supervision would subject him to a heightened sanction. With regard to equal protection, the defendant contended that "no basis exists for classifying him differently than others who have never been charged with, or who have been acquitted of, driving under the influence," because he had no prior "conviction" for DUI (since the prior DUI charges were dismissed after he successfully completed supervision).The Supreme Court found that there is a rational basis for distinguishing between those who have previously undergone supervision for DUI and those who have not.

People v. Eckhardt, 127 Ill.2d 146, 535 N.E.2d 847 (1989) The Supreme Court upheld Ch. 38, ¶1005-6-1(d) over the contention that it violates equal protection. Section 1005-6-1(d) provides that a defendant charged with driving under the influence is not eligible for supervision if, within the past 5 years, he "pleaded guilty to or stipulated to the facts supporting a charge or a finding of guilty to [reckless driving] and the plea or stipulation was the result of a plea agreement."

People v. Emrich, 113 Ill.2d 343, 498 N.E.2d 1140 (1986) Following a traffic accident, the defendant was taken to a hospital where blood samples were taken. The defendant was subsequently charged with reckless homicide and driving under the influence. The trial court suppressed the blood sample evidence. The trial judge found that since no anticoagulant and preservative had been added to the vials of blood, it was impossible for the defendant to obtain an independent analysis. In addition, the trial court found that the evidence was inadmissible under Ch. 95½, ¶11-501.2(a). The Supreme Court held that the trial judge properly suppressed the blood sample as to the DUI prosecution. Section 11-501.2(a) requires that, in order to be admissible, blood samples must be in tubes "containing an anticoagulant/preservative." This statute is mandatory; since the State failed to comply with the anticoagulant and preservative requirement, the blood sample evidence cannot be introduced on the DUI charge. However, compliance with ¶11-501.2 is a prerequisite for the use of blood sample evidence only for DUI and not for reckless homicide. Thus, the admissibility of the blood sample evidence as to the reckless homicide charge depends on "whether the blood analysis meets the ordinary test of admissibility." In this case, the failure to preserve the blood sample did not rise to the level of a constitutional violation.

People v. Moore, 138 Ill.2d 162, 561 N.E.2d 648 (1990) The defendant was arrested for DUI, and a breath test was taken. Defendant's driver's license was summarily suspended; however, a petition to rescind the suspension was granted after the judge found that the arresting officer lacked probable cause to stop the defendant. Before his DUI trial, the defendant moved to suppress the breath test results due to the finding of no probable cause. The trial judge granted the motion on the grounds of collateral estoppel. The Supreme Court reversed citing many decisions of the Appellate Court holding that collateral estoppel is not applicable in this situation. See, **People v. Filitti**, 190 Ill.App.3d 884, 546 N.E.2d 1142 (2d Dist. 1989); **People v. Flynn**, 197 Ill.App.3d 13, 554 N.E.2d 668 (1st Dist. 1990).

People v. Hester, 131 Ill.2d 91, 544 N.E.2d 797 (1989) The defendant was convicted of driving under the influence of alcohol and reckless homicide. The charges resulted from the defendant losing control of her car and striking a pedestrian. Shortly after the incident, the defendant was given a breathalyzer test which showed her blood-alcohol level to be .20%. Several State witnesses noticed a strong odor of alcohol on defendant's breath and that she appeared intoxicated. Other witnesses testified that the brake lights on

defendant's car were not activated and that the car was speeding and did not slow down. The defendant testified that she had consumed one beer, that she felt the car go "bump" and pull to the right, and that she could not regain control of the car. She also stated that she was dizzy and did not know what was happening after the incident. Defendant also testified that she took prescription drugs, which defense counsel argued had affected the breath test. Both sides presented expert testimony regarding the accuracy of the breathalyzer machine and accident reconstruction testimony. The jury was given the following instruction:

> "If you find that the amount of alcohol in the defendant's blood as shown by a chemical analysis of her breath was .10 percent or more by weight of alcohol, you may presume that the defendant was under the influence of intoxicating liquor.
>
> However, this presumption is not binding on you and you may take into consideration any other evidence in determining whether or not the defendant was under the influence of intoxicating liquor, at the time the defendant drove a vehicle."

This instruction is IPI 23.06 as modified by replacing the word "shall" with the word "may," as emphasized above. The Supreme Court discussed mandatory and permissive presumptions and held that the above instruction was permissive. A permissive presumption is proper when there is a rational connection between the facts proved and the fact presumed, the ultimate fact must be more likely than not to flow from the basic fact, and the inference must be supported by corroborating evidence of guilt. The presumption that a person with a blood alcohol level of at least .10% is intoxicated is rational and more likely than not to be accurate. In addition, there was corroborative evidence of the defendant's guilt.

People v. Baker, 123 Ill.2d 233, 526 N.E.2d 157 (1988) The defendant pleaded guilty to driving under the influence, and pursuant to Ch. 95½, ¶11-501(f) was ordered to undergo a "professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such problem." Section 11-501(f) provides that such an evaluation "shall be required" prior to any disposition on a DUI offense. Defendant filed a motion to rescind the above order on the ground that such an evaluation violated his Fifth Amendment rights. The Supreme Court held that the professional evaluation under the above statute is not mandatory, but permissive. Thus, a trial judge may impose sentence in a DUI case in the absence of such an evaluation. The Court also stated that the professional evaluation assists the judge in determining a proper course of treatment for the defendant and may supply mitigating factors. Since a judge may sentence a defendant to the maximum penalty unless the evaluation reveals reasons for a lesser sentence, the "defendant's fear that the evaluation could impose a heavier penalty and violate his fifth amendment privilege is without merit." The Court acknowledged that a defendant may assert his Fifth Amendment right in regard to the professional evaluation. However, the right is not self-executing, but must be asserted in a "timely and proper manner." To properly assert the Fifth Amendment privilege, the defendant must "claim it during the examination and as questions are asked." Additionally, the claim may only be asserted "in response to incriminating questions," and the defendant "must have a reasonable ground to believe that his answers to question asked might tend to incriminate him."

People v. Brown, 177 Ill.App.3d 671, 532 N.E.2d 547 (4th Dist. 1988) A hearing was held on defendant's motion to rescind the statutory summary suspension of his driver's license. The arresting officer testified and defendant's motion was denied. Subsequently, the defendant filed a motion to suppress evidence on the ground that there was no probable cause for his arrest. After the defendant testified, the State asked the judge to take judicial notice of the arresting officer's testimony at the earlier hearing. The judge did so and found that probable cause existed. The Court held that the trial judge erred by taking judicial notice of the officer's previous testimony. There was no indication why the arresting officer was not present at the suppression hearing, and no showing regarding the existence of an exception which would allow the prior hearsay to be used as substantive evidence.

People v. Thomas, 199 Ill.App.3d 79, 556 N.E.2d 1246 (2d Dist. 1990) At the defendant's trial for DUI, the State introduced a videotape which showed the defendant being processed at the police station. The tape also showed two unrelated DUI arrests in which the persons arrested took performance and breathalyzer tests. (The defendant took neither test.) The Court held that defendant was prejudiced because the jury was allowed to see the unrelated incidents.

People v. Hightower, 138 Ill.App.3d 5, 485 N.E.2d 452 (3d Dist. 1985) The Court held that in imposing a sentence for driving under the influence, the judge may properly rely on the fact that defendant had previously pleaded guilty to a DUI charge and was placed on supervision.

People v. Matthews, 304 Ill.App.3d 514, 711 N.E.2d 435 (5th Dist. 1999) Illinois law does not authorize an extended term for aggravated DUI. The court concluded that the plain language of 625 ILCS 5/11-501(d)(2), which provides that aggravated driving under the influence of alcohol "is a Class 4 felony for which a person, if sentenced to a term of imprisonment, shall be sentenced to not less than one year and not more than 3 years," precludes an extended term.

People v. Ullrich, 328 Ill.App.3d 811, 767 N.E.2d 411 (1st Dist. 2002) 625 ILCS 5/2-118.1(b), which authorizes consideration of the arresting officer's hearsay report at a hearing on a petition to rescind a statutory summary suspension, complies with due process. However, the motorist's waiver of his statutory right to subpoena the officer must be knowing, voluntary and intentional.

People v. Shelton, 303 Ill.App.3d 915, 708 N.E.2d 815 (5th Dist. 1999) A defendant charged with DUI has a right to an attorney during any "critical stage" of the criminal process, "just as any defendant charged with any crime has the right to speak to an attorney." Although the rules are "slightly different" in regards to DUI (because the right to speak to an attorney "may not unduly delay" chemical testing for the presence of alcohol or drugs), the State may not attempt to draw a negative inference from a suspect's exercise of his right to counsel. Thus, although the arresting officer had a right to conduct chemical testing, the State "should not have emphasized [defendant's] request for an attorney, since this evidence may lead the jury to assume that defendant would not have asked for an attorney unless he were guilty. The Court also found that by characterizing a request to speak to an attorney as a "legal refusal" to submit to chemical testing, the prosecutor improperly suggested to the jury that a request to speak to counsel carries "some legal presumption of guilt." See also**, People v. Whipple**, 307 Ill.App.3d 43, 716 N.E.2d 806 (3d Dist. 1999) (person suspected of driving while intoxicated has no constitutional or statutory right to consult with an attorney before submitting to breathalyzer test).

People v. Hirsch, 355 Ill.App.3d 611, 824 N.E.2d 321 (2d Dist. 2005) Court affirms defendant's conviction of aggravated driving while under the influence (625 ILCS 5/11-501(d)(1)). At trial, defendant, who was confined to a wheelchair, contended that his actions were attributable to his physical condition and his medications. On appeal, defendant argued, inter alia, that the State failed to prove defendant guilty beyond a reasonable doubt because the many prescribed medications that defendant took rendered the breathalyzer test inaccurate. Defendant relied on **People v. Miller**, 166 Ill.App.3d 155, 519 N.E.2d 717 (1988), to argue that the State was obligated to establish that when a defendant is administered medicine shortly before a blood test, the prescribed treatment did not affect the accuracy of the test. Rejecting defendant's reliance on **Miller** and relying on **People v. Bishop**, 354 Ill.App.3d 549, 821 N.E.2d 677 (1st Dist. 2004), the court concluded that absent evidence that defendant's medications rendered the test results inaccurate, the accuracy of the test is presumed.

People v. Robinson, 368 Ill.App.3d 963, 859 N.E.2d 232 (1st Dist. 2006) Defendant was charged with aggravated DUI based on having been twice previously convicted of DUI (625 ILCS 5/11-501(d)(2)). Aggravated DUI based upon prior DUI convictions is a Class 4 felony, while DUI is a Class A misdemeanor.

The Appellate Court held that the trial court erred by admitting evidence of defendant's two prior DUI violations at the bench trial. 725 ILCS 5/111-3(c) provides that where the State seeks an enhanced sentence due to a prior conviction, neither the prior conviction nor the intention to seek an enhanced sentence are elements of the offense.

People v. Toia, 333 Ill.App.3d 523, 776 N.E.2d 599 (1st Dist. 2002) Public Act 89-637 (eff. 1/1/97), which specifically excludes DUI arrests from records which are subject to expungement where supervision is ordered, did not violate the ex post facto clauses of the Illinois or Federal Constitutions although it was enacted during the five-year waiting period after which, under the prior law, defendant could have moved for expungement.

People v. Maldonado, Vasquez, & Mongue, 386 Ill.App.3d 964, 897 N.E.2d 854 (2d Dist. 2008) The court rejected the argument that there were irreconcilable conflicts between Public Acts 94-329, which amended 625 ILCS 5/11-501(d) to elevate the Class A misdemeanor of DUI to the Class 4 felony of aggravated DUI where the driver did not have a driver's license, P.A. 94-609, which was passed two days later and changed when the trial court could grant probation, and P.A. 94-329, which passed approximately one year later and which expanded the purposes for which DUI fines and fees could be used. The court also rejected the argument that there were numerous conflicts among seven public acts amending the Vehicle Code (Public Acts 94-329, 94-609, 94-963, 94-110, 94-113, 94-114, and 94-116).

People v. Halsall, 178 Ill.App.3d 617, 533 N.E.2d 535 (3d Dist. 1989) Following conviction for DUI, the defendant was sentenced to one year probation, participation in an alcohol education program, and a $500 fine. In denying defendant's request for supervision, the trial judge said that "it was virtually certain that no defendant convicted of driving under the influence would receive supervision." Because the trial judge did not properly exercise discretion and consider the factors which may warrant supervision, the sentence was vacated and the cause remanded.

People v. Hanna, 185 Ill.App.3d 404, 541 N.E.2d 737 (5th Dist. 1989) The trial judge dismissed a DUI charge because the arresting officer did not transmit the citation to the clerk's office within 48 hours, as is required by Rule 552. The Court reversed, holding that Rule 552 is directory rather than mandatory.

People v. Pelc, 177 Ill.App.3d 737, 532 N.E.2d 552 (4th Dist. 1988) A police officer had probable cause to arrest defendant for DUI where the defendant admitted being in an automobile accident, smelled of alcohol, had bloodshot eyes and slurred speech, and performed poorly on the field sobriety tests. See also, **People v. Sanders**, 176 Ill.App.3d 467, 531 N.E.2d 61 (4th Dist. 1988); **People v. Broudeur**, 189 Ill.App.3d 936, 545 N.E.2d 1053 (2d Dist. 1989); **People v. Wolff**, 182 Ill.App.3d 583, 538 N.E.2d 610 (3d Dist. 1989).

People v. Kamide, 254 Ill.App.3d 67, 626 N.E.2d 337 (2d Dist. 1993) Defendant was convicted of driving with an alcohol concentration of .10 or greater, and claimed that the trial judge should have given supplemental instructions on the legal meaning of the word "alcohol." Defendant claimed that he had consumed Ventolin, an asthma medication, before he was pulled over. Expert testimony showed that the active ingredient of Ventolin is an "alcohol type compound" that would register on the breathalyzer. The Court vacated the conviction because the trial court failed to clarify the jury's confusion concerning the legal definition of "alcohol." The Court found that the legislature intended the DUI statutes to apply only to consumption of ethyl alcohol, and not to substances that may register as alcohol on a breathalyzer but do not cross the blood/brain barrier and cause impairment of the brain's functions.

People v. Schaefer, 274 Ill.App.3d 450, 654 N.E.2d 267 (2d Dist. 1995) The Appellate Court held that statutory DUI provisions do not apply to a bicyclist under the influence of alcohol.

People v. Boshears, 228 Ill.App.3d 667, 592 N.E.2d 1187 (5th Dist. 1992) The defendant was charged with driving under the influence of alcohol and DUI with a blood or breath alcohol concentration in excess of .10. At trial, two officers repeatedly testified that based upon their observations of defendant, they believed that his blood alcohol content exceeded .10. The Court found that while a witness may testify to his opinion that an individual is intoxicated, the only admissible evidence of blood-alcohol concentration is chemical analysis of the person's blood, urine, or breath. However, any prejudice was cured in this case because the trial court sustained defense objections and ordered the jury to disregard the testimony.

People ex rel Glasgow v. Carlson, 2016 IL 120544 (No. 120544, 12/1/16)

1. The State filed a *mandamus* petition seeking to compel the trial court to vacate its sentencing order, classify defendant's aggravated DUI based on a third DUI as a Class 2 felony, and impose a Class X sentence under 730 ILCS 5/5-4.5-95(b). Section 5-4.5-95(b) requires a Class X sentence in specified circumstances where the defendant is convicted of a Class 1 or Class 2 felony after having been twice convicted of Class 2 or greater felonies arising from separate series of acts.

The court concluded that the legislature intended to classify a third DUI conviction as a Class 2 felony. The court found that 625 ILCS 5/11-501(d)(1)(A) and (d)(2)(B) provide that a third DUI constitutes aggravated DUI and is a Class 2 felony, and that each subsequent DUI either increases the classification of the offense or eliminates probation as a possible disposition. The court acknowledged that the sentencing provisions of §11-501 are complex, especially for aggravated DUI, but found that the legislature intended to create a Class 2 offense for aggravated DUI based upon a third commission of DUI. The court stressed that §11-501(2)(A), which provides that aggravated DUI is a Class 4 felony, applies only if no other provision of §11-501(2) is applicable.

2. In the process of its opinion, the court noted that the trial judge relied on the "DUI Traffic Illinois Judicial Bench Book" in concluding that there was an ambiguity in §11-501 concerning the sentencing classification of a third DUI. The court noted that the Bench Book is merely a practical legal reference guide and should not be viewed as precedential.

A writ of *mandamus* was awarded directing the trial court to vacate its sentencing order and impose a new sentence.

People v. McKown, 236 Ill.2d 278, 924 N.E.2d 941 (2010)

When performed in compliance with the protocol adopted by the National Highway Traffic Safety Administration, horizontal gaze nystagmus testing has gained general acceptance as a reliable indication of alcohol consumption. However, the results of HGN testing do not, in and of themselves, establish that a particular person is impaired by the consumption of alcohol. Instead, HGN test results are but one factor to be considered in determining impairment. (See **EVIDENCE**, §19-27(a)).

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 (2010)

Where the defendant was convicted of one count of aggravated driving under the influence of a drug or combination of drugs while his driver's license was suspended or revoked and one count of driving while his license was suspended or revoked, the court rejected the argument that the conviction for driving while license revoked must be vacated on one-act, one-crime principles or as a lesser included offense. (See **VERDICTS**, §§55-3(a), (b)).

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

People v. Barwan, Sandkam, & Klicko, 2011 IL App (2d) 100689 (Nos. 2-10-0689, 2-10-0690, 2-10-0691,

7/26/11)

The court declined to decide whether ILCS 5/11-501(d)(2)(B), which imposes a Class 2 felony sentence for aggravated DUI based on three DUI "violations," applies if at sentencing, one of the violations used as a predicate offense is a pending charge which has not been resolved. The court noted, however, that under Supreme Court precedent, a charge on which the defendant received supervision is a prior "violation" for purposes of the Class 2 enhancement. (**People v. Sheehan**, 168 Ill.2d 298, 659 N.E.2d 1339 (1995)).

The trial court's pretrial orders dismissing the charges as insufficient were reversed, and the causes were remanded for further proceedings.

(Defendant was represented by Assistant Defender Kathleen Weck, Elgin.)

People v. Borys, 2013 IL App (1st) 111629 (No. 1-11-1629, 8/23/13)

Evidence of HGN field-sobriety testing is admissible for the purpose of showing whether the subject has likely consumed alcohol and may be impaired if the test is performed under National Highway Transportation Safety Administration (NHTSA) standards. A foundation must be laid showing that the witness is properly trained and that he performed the test in accordance with proper procedures.

NHTSA standards require that the examining officer place a stimulus 12 to 15 inches from the subject's eyes as the officer moves the stimulus to investigate for the presence of nystagmus. Where the officer testified that he placed the stimulus four inches from defendant's eyes, he failed to perform the test in accordance with NHTSA standards and the results of the test were inadmissible. However, the court concluded that the error in the admission of this evidence was harmless because retrial without the challenged evidence would produce no different result.

(Defendant was represented by Assistant Defender Patrick Morales-Doyle, Chicago.)

People v. Cook, 2011 IL App (4th) 090875 (No. 4-09-0875, 9/9/11)

A person commits aggravated DUI when, in committing a DUI offense, he is involved in an accident that results in the death of another person, when the DUI violation was a proximate cause of the death. "Proximate cause" is a cause that directly produces an event without which the event would not have occurred. Proximate cause is established if an injury was foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his or her conduct. Although the foreseeability of an injury will establish proximate cause, the extent of the injury or the exact way in which it occurs need not be foreseeable.

Defendant's car was fourth in a line of five cars traveling northbound at 2:40 a.m. on a two-lane highway from a bar where all of the drivers had been patrons. A state trooper was traveling southbound on the highway almost 40 mph over the 55 mph speed limit, responding to a police call for backup at the bar. The first two cars drove onto the shoulder when they saw the activated overhead lights of the trooper's car. The third driver steered his entire car into the southbound lane, causing the trooper's car to skid into the northbound lane when the third car and the trooper's car made contact. Defendant's car then hit the driver's side of the trooper's car, killing the trooper on impact. Before the accident, defendant had been traveling 45 mph, and slowed to 38 mph before the impact. A defense expert concluded that only 1.23 seconds elapsed between the first collision and the second. Defendant's BAC was between .109 and .119 at the time of the accident, and controlled substances were detected in his blood and urine. The driver behind defendant steered his car onto an adjoining field in anticipation of the second collision. He had noticed the trooper's lights five to ten seconds before the accident.

The court concluded that a rational jury could find that defendant's DUI violation was the proximate cause of the trooper's death. The jurors "were entitled to conclude that a reasonable person in defendant's position should have anticipated danger stemming from the intoxication of defendant and the other drivers leaving [the bar] at the same time, amplified by the time of day, the undivided, two-way traffic of the road on which defendant traveled, and the road's 55-miles-per-hour speed limit. These conditions warranted an increased awareness while driving; instead of driving with extraordinary caution, defendant drove while

impaired by the effects of drugs and alcohol on his perception, coordination, and reflexes." The court gave no weight to the evidence that defendant had only 1.23 seconds to react, because in its view, the defendant should have been alerted to the danger posed by the trooper's approaching vehicle before the first collision occurred.

The court also rejected the argument that the third driver's act of crossing into the oncoming lane was an intervening or superceding cause of the trooper's death. The trooper was killed by his collision of his car with defendant's, while defendant's DUI violation was ongoing. The fact that the driver's swerving into the southbound lane was unexpected did not eliminate defendant's responsibility because a sober driver could have reacted more appropriately to the trooper's emergency lights before the third driver crossed into the southbound lane.

(Defendant was represented by Assistant Defender Michael Delcomyn, Springfield.)

People v. Harris, 2014 IL App (2d) 120990 (No. 2-12-0990, 5/22/14)

Instrument logs certifying the accuracy of a Breathalyzer machine are hearsay, but may be admitted under the business-records exception to hearsay if the State lays a proper foundation. This foundation is laid by showing that the writing or record was made in the regular course of business at the time of the event or transaction, or a reasonable time thereafter. 720 ILCS 5/115-5(a). Illinois Rule of Evidence 803(6) similarly requires that a business entry be made at or near the time of the event or transaction.

Here the State presented evidence that the entry in the instrument logbook (showing that a Breathalyzer machine had been certified as accurate) was made in the regular course of business, but no evidence that it was made at the time of the event or within a reasonable time thereafter. The State thus failed to lay the necessary foundation. Without the logbook, there was no evidence about the accuracy of the Breathalyzer machine, which in turn meant the results of the Breathalyzer test could not be relied upon to find defendant guilty of driving under the influence of alcohol. The court reversed his conviction and remanded for a new trial.

(Defendant was represented by Supervisor Josette Skelnik, Elgin.)

People v. Hill, 2012 IL App (5th) 100536 (No. 5-10-0536, 5/2/12)

1. Aggravated driving under the influence requires a prison term of not less than three but not more than 14 years, "unless the court determines that extraordinary circumstances exist and require probation." (625 ILCS 5/11-501(d)(2)(G)). Adopting the analysis of **People v. Winningham**, 391 Ill. App. 3d 476, 909 N.E.2d 363 (4th Dist. 2009), the Appellate Court found that the phrase "extraordinary circumstances" is not unconstitutionally vague. The court found that the legislature intended to grant deference to trial courts to determine when probation was appropriate, and that the defendant failed to overcome the presumption that the statute was constitutional.

2. The court also rejected the argument that "extraordinary circumstances" were present here, and that the trial court should have imposed a term of probation. Whether probation is justified by extraordinary circumstances is left to the trial court's discretion, whose judgment is reviewed only for abuse of discretion. The trial court did not abuse its discretion here; although defendant lacked a serious criminal history, the court found that there was no merit to the argument that probation was justified because the decedent had induced defendant to drink alcohol and drive while intoxicated. Defendant's four-year-sentence was affirmed.

(Defendant was represented by Assistant Defender Larry O'Neill, Mt. Vernon.)

People v. Jacobs, 405 Ill.App.3d 210, 939 N.E.2d 64, 2010 WL 4366876 (4th Dist. 2010)

The Sixth Amendment requires that a witness against the defendant appear at trial and be subject to cross-examination, or, if unavailable, that defendant have had a prior opportunity to cross-examine the witness. In **Melendez-Diaz v. Massachusetts**, 557 U.S. ___, 129 S.Ct. 2527, ___ L.Ed.2d ___ (2009), the Supreme Court concluded that a sworn certificate of analysis showing the results of forensic testing of seized

substances were the functional equivalent of live, in-court testimony and thus inadmissible absent a showing that the analysts were unavailable to testify and that defendant had a prior opportunity to cross-examine them. The court noted that it did not hold that "anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case." 129 S.Ct. at 2532 n.1.

One of the foundational requirements for the admission of a breathalyzer-test result is that the machine used was regularly tested for accuracy. A police officer's testimony that the machine was certified as accurate based on logbook entries, offered to satisfy that foundational requirement, were not testimonial. The certifications were not compiled during the investigation of a particular crime and do not establish the criminal wrongdoing of a defendant. They did nothing more than establish that the machine was tested and working properly.

People v. Korzenewski, 2012 IL App (4th) 101026 (No. 4-10-1026, 6/7/12)

In addition to any other fine or penalty, an individual who is convicted of DUI concerning an incident in which the operation of a motor vehicle proximately caused an appropriate emergency response must pay restitution for the cost of that response. (625 ILCS 5/11-501.01(i)). The Appellate Court concluded that a routine traffic stop for speeding does not qualify as "an appropriate emergency response" under the meaning of §11-501.01(i). Applying **Gaffney v. Board of Trustees of the Orland Fire Protection District**, 2012 IL 110012, the court concluded that the word "emergency" should be interpreted to mean "an unforseen circumstance involving imminent danger to a person or property requiring an urgent response."

Where the arresting officer testified that he was conducting speed enforcement as part of his assignment to the traffic enforcement detail, and that he stopped the defendant's car for going 19 miles over the speed limit, the court concluded that the officer was conducting a routine stop rather than reacting to a situation which required an urgent response. Because defendant did not proximately cause an incident requiring an emergency response, restitution to the police department was not authorized under §11-501.01(i).

The court vacated the restitution order requiring the payment of $133 to the police department which stopped defendant for speeding.

(Defendant was represented by Assistant Defender Duane Schuster, Springfield.)

People v. McPeak, 2012 IL App (2d) 110557 (No. 2-11-0557, 11/2/12)

1. The State bears the burden of proving all elements of the offense beyond a reasonable doubt. Where a statutory exception to an offense is "part of the body of the substantive offense," the State's burden includes disproving the exception beyond a reasonable doubt. Even where an exception appears within the statutory definition of an offense, however, it is "part of the body" of the offense only if it is "so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception."

By contrast, a statutory exception which merely withdraws certain acts or persons from the operation of the statute is not part of the body of the offense. The defense has the burden of proof concerning such exceptions.

2. 625 ILCS 5/6-303(a) defines the offense of driving with a suspended or revoked license as driving or being in actual physical control over a motor vehicle while one's license is revoked or suspended, "except as may be specifically allowed by" statutes authorizing a "monitoring device driving permit," which authorizes the offender to drive upon installation of a device which prevents the vehicle from starting if the driver's breath alcohol exceeds a specified level. The Secretary of State must issue such a permit to first offenders unless the offender declines.

The court concluded that the MDDP provision merely withdraws drivers who receive an MDDP from the scope of the statute defining the offense of driving with a revoked or suspended license, and that the provision is therefore not part of the body of the offense. Thus, the State need not present evidence

affirmatively showing that the defendant was not granted an MDDP. Because the defendant did not raise as a defense that she had been issued and was driving in compliance with an MDDP, the State met its burden of proof concerning the offense despite its failure to present evidence whether defendant had been granted an MDDP.

(Defendant was represented by Assistant Defender Kathleen Hamill, Elgin.)

People v. Mischke, 2014 IL App (2d) 130318 (No. 2-13-0318, 12/29/14)

Under 625 ILCS 5/11-501(d)(2)(A), a person convicted of aggravated driving while under the influence (DUI) is guilty of a Class 4 felony. But under subsection (d)(2)(B), a third violation of "this Section" is a Class 2 felony. The trial court sentenced defendant for aggravated DUI as a Class 2 felony. Defendant argued on appeal that he should have been sentenced as a Class 4 felony since he had two prior convictions for non-aggravated DUI, and the statute requires two prior convictions for aggravated DUI.

The Appellate Court held that the language of subsection (d)(2)(B), "this Section," refers to all of section 11-501, not simply to subsection (d)(2)(B). Section 11-501 includes non-aggravated as well as aggravated DUI, while subsection (d)(2)(B) only includes aggravated DUI. The enhancement to a Class 2 felony thus occurs whenever a defendant has two prior convictions for any form of DUI, not just aggravated DUI. The trial court therefore properly sentenced defendant to a Class 2 felony.

(Defendant was represented by Assistant Defender Bruce Kirkham, Elgin.)

People v. Morris, 2014 IL App (1st) 130512 (No. 1-13-0152, 7/23/14)

The Illinois Vehicle Code defines the offense of driving under the influence of alcohol as driving or being "in actual physical control" of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2). A vehicle does not need to be moving or the engine running for the defendant to be in actual physical control of the vehicle. The purpose of deeming someone to be in control of a vehicle that is not moving or running is to prevent people who have the capability to begin driving a vehicle from making the decision to begin driving while they are impaired.

Defendant argued that the phrase "in actual physical control" was unconstitutionally vague and ambiguous as applied to him because it did not provide proper notice about what constitutes actual physical control, and failed to provide a reasonable standard to allow an ordinary person to gauge or regulate his conduct.

A vagueness challenge is rooted in due process and asks whether a person of ordinary intelligence would reasonably understand what is prohibited. A statute is unconstitutionally vague if its terms are so ill-defined that its meaning rests on the opinions and whims of the trier of fact rather than objective criteria or facts. Vagueness challenges that do not involve the First Amendment are examined in light of the specific facts of the case. The defendant must show that the statute did not did not provide effective notice that his conduct was prohibited.

Here, the police found defendant passed out in the front seat of a parked car, with the ignition off, the driver's side door open, and keys in his right hand. The Appellate Court held that the statute as applied to defendant in this situation was not unconstitutionally vague. It is not unreasonable to require a person to know that he could be found in actual physical control of a vehicle under these facts. While defendant may not have "actually known" that his conduct constituted actual physical control, ignorance of the law is not a defense, and does not alone render a statute unconstitutionally vague.

(Defendant was represented by Assistant Defender Rebecca Levy, Chicago.)

People v. Sprind, 403 Ill.App.3d 772, 933 N.E.2d 1197, 2010 WL 317230 (5th Dist. 2010)

Regulations that require that blood be drawn with use of a non-alcohol disinfectant and that urine be collected by police personnel rather than a hospital nurse were invalid. The regulations exceeded the authority delegated by statute (625 ILCS 5/11-501.2), which is only to prescribe regulations to ensure the validity of test results. Requiring that a disinfectant be used during a blood draw is for the subject's well-

being, not for evidence-collection purposes. Urine samples collected by police are not more reliable than those taken by a nurse, so requiring that the urine only be collected by a police officer also exceeded the authority delegated by statute.

People v. Way, 2015 IL App (5th) 130096 (No. 5-13-0096, 9/25/15)

1. An individual charged with a criminal offense has the right to present a defense along with his or her version of the facts. As part of the right to present a defense, the accused has the right to show facts which tend to negate one or more elements of the offense.

2. The court concluded that a defendant charged with aggravated DUI (625 ILCS 5/11-501(a)(6), (d)(1)(c)) was denied her right to present a defense where the trial court granted a motion in limine to prohibit her from showing that her low blood pressure might have caused her to lose consciousness just before the crash. Aggravated DUI occurs where: (1) defendant drove with any amount of cannabis or controlled substances in her breath, blood, or urine, (2) was involved in an accident resulting in great bodily harm, and (3) the violation of the prohibition against driving with a banned substance was "a proximate cause of the injuries."

The court acknowledged that the aggravated DUI statute did not require the State to prove that defendant was impaired by the cannabis in her system. However, an essential element of aggravated DUI is that the cannabis violation was the proximate cause of the crash. The court concluded that the evidence of defendant's low blood pressure was relevant to the issue of proximate cause and therefore should have been admitted.

The conviction was reversed and the cause remanded for a new trial.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

People v. Winningham, 391 Ill.App.3d 476, 909 N.E.2d 363 (4th Dist. 2009)

625 ILCS 5/11-501(d)(2), which requires a sentence of 3 to 14 years imprisonment for aggravated driving under the influence which results in death unless the court determines that "extraordinary circumstances exist and require probation," is neither unconstitutionally vague on its face nor unconstitutionally vague because it is susceptible to arbitrary and discriminatory application.

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§50-2(b)
Sufficiency of the Evidence

People v. Johnson, 197 Ill.2d 478, 758 N.E.2d 805 (2001) Inaccurate implied consent warnings concerning the effect of refusing to take a blood alcohol test require rescission of a driver's license suspension only if the inaccuracy "directly affects the motorist's potential length of suspension." Rescission was not required where the warning given to a first offender contained incorrect information about the length of suspension applicable to a non-first offender. In the course of its holding, the court stated that the purpose of implied consent warnings is not to permit motorists to make an informed choice whether to take a blood alcohol test, but to assist the State in obtaining objective evidence of impairment and removing "problem drivers" from the roads.

People v. Fisher et al., 184 Ill.2d 441, 705 N.E.2d 67 (1998) Neither equal protection nor due process are violated by imposition of a two-year-suspension of a driver's license for a non-first-time DUI offender who refuses to submit to chemical testing after an arrest for DUI, but only a one-year-suspension for persons who submit to testing and are found to have a blood-alcohol content in excess of the legal limit. Similarly, neither equal protection nor due process are violated by provisions permitting a non-first offender who fails chemical

testing to apply for a hardship driving permit after 90 days, while prohibiting the issuance of hardship permits for non-first offenders who refuse to submit to chemical testing. The court concluded that the distinction between drivers who refuse to submit to chemical testing and those who fail such testing is rationally related to the goal of improving highway safety, because it provides an incentive for drivers to comply with implied consent laws and promotes highway safety by permitting authorities to remove impaired drivers from the highways. In addition, equal protection is not violated because non-first-time offenders who refuse chemical testing and who are subject to a two-year-license suspension may receive hardship relief if they are under the age of 21. The Court refused to assume that non-first offenders under the age of 21 present a greater risk to highway safety than non-first offenders over that age, declined a request to take judicial notice of that assertion, and concluded that in the absence of any evidence on the point defendants had failed to carry their burden of establishing an equal protection violation.

People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756 (1989) The defendant was convicted of DUI after the car he was driving hit and killed a person walking on the highway. Patrons of the tavern in which defendant was drinking before the accident and defendant's wife testified that he did not appear to be intoxicated. The arresting officers did not notice any erratic driving and could not form an opinion as to defendant's intoxication. A blood test at a hospital (about two hours after the accident) showed that defendant had an alcohol concentration of .165. but the results of this test were "effectively discredited" by another expert witness. The Court held that the question of defendant's intoxication was one of fact for the jury, and the following evidence was sufficient to support the jury verdict: defendant admitted spending the afternoon in a tavern drinking; defendant's behavior after the accident could be viewed as "irrational"(the victim's wallet and glove flew through defendant's shattered windshield onto the passenger seat and a police car, with lights flashing, immediately gave chase, but defendant insisted that he had hit a mailbox and never noticed the police car), and an officer at the scene smelled alcohol on defendant's breath and administered field sobriety tests on which defendant performed poorly.

People v. Foster, 138 Ill.App.3d 44, 485 N.E.2d 603 (3d Dist. 1985) A defendant need not be observed driving a vehicle to be convicted of DUI — the driving may be established by other evidence, direct or circumstantial. However, the corpus delicti of the charge cannot be proved by a defendant's admission alone — there must be some independent evidence to corroborate an admission. See also, **People v. Call**, 176 Ill.App.3d 571, 531 N.E.2d 451 (4th Dist. 1989).

People v. Vallero, 134 Ill.App.3d 919, 481 N.E.2d 297 (3d Dist. 1985) A police officer saw a vehicle lodged in a roadside ditch. The defendant, the only occupant, attempted to maneuver the car out of the ditch by driving it forward and backward. Finally the defendant exited the car. The officer observed that the defendant was staggering, his speech was slurred and he smelled of alcohol. Defendant was convicted of DUI and driving while his license was revoked but he contended that he was not in control of a "vehicle" because his car was lodged in a ditch. The Appellate Court rejected defendant's contention: "Merely because a vehicle is temporarily disabled by weather, road conditions or ‘ditch conditions' under the circumstances of a particular factual setting does not convert an otherwise operable automobile into a ‘non-vehicle' for purposes of avoiding liability under the drunk driving laws of this State."

People v. Call, 176 Ill.App.3d 571, 531 N.E.2d 451 (4th Dist. 1989) A car owned by defendant's family was found in a ditch. A witness testified that the car had passed him at a high rate of speed and that he saw a person matching defendant's description exit the car in the ditch. Defendant was found walking along the highway about two miles from the car. Defendant admitted that he was the driver of the car. Defendant had mud on his pants and shoes. This evidence was sufficient to prove that defendant was intoxicated while driving the car. The officer who found defendant walking on the highway detected the odor of alcohol and noticed that defendant's speech was slurred. Defendant performed poorly on field-sobriety tests. A

breathalyzer test administered two hours after the accident indicated defendant's blood-alcohol concentration was 0.15. Finally, defendant admitted to the officer that he had nothing to drink after the accident. See also, **People v. Cummings**, 176 Ill.App.3d 293, 530 N.E.2d 672 (2d Dist. 1988); **People v. Bentley**, 179 Ill.App.3d 347, 534 N.E.2d 654 (1st Dist. 1989).

People v. McDermott, 141 Ill.App.3d 996, 490 N.E.2d 1293 (1st Dist. 1986) Defendant was found guilty of reckless homicide and driving under the influence. The Court held that the evidence was insufficient to prove defendant was driving under the influence of alcohol or drugs. A toxicologist testified that the concentration of alcohol in defendant's blood was .025; "[i]f there is an alcohol concentration in the blood of .05 or less, an individual is presumed not to be under the influence of alcohol." The toxicologist also testified that there was a "high level" of cannabis in defendant's urine, but he could not say how it affected defendant's ability to perform normal tasks. The Court stated,"the State must show that the defendant was under the influence so that he was less able, either mentally or physically, to operate an automobile with safety to himself and to the public. Here. there was no such testimony from [the toxicologist] or any other witness, and the State has not shouldered its burden."

People v. Briseno, 343 Ill.App.3d 953, 799 N.E.2d 359 (1st Dist. 2003) After defendant was stopped at a DUI roadblock, he admitted to officers that he had smoked marijuana before driving. When performing field sobriety tests, defendant "sway[ed] moderately" and "extend[ed] his arms for balance." In addition, the arresting officer testified that he detected the odor of cannabis on defendant's breath and in defendant's vehicle, and that defendant exhibited dilated eyes, slurred speech and slow motor skills. The court rejected the argument that the evidence was insufficient to establish that defendant was driving under the influence of cannabis. Although the National Highway Traffic Safety Administration has recognized that persons who are more than 50 pounds overweight may not be physically capable of completing field sobriety tests even when sober, defendant's guilt was established beyond a reasonable doubt by his slurred speech, dilated pupils and impaired motor skills, the detection of the odor of cannabis in his vehicle and on his breath, and his admission that he had smoked marijuana. Under these circumstances, there was sufficient evidence to sustain the conviction even if the results of the field sobriety tests were excluded.

People v. Luth, 335 Ill.App.3d 175, 780 N.E.2d 740 (4th Dist. 2002) Under **People v. Thoman**, 321 Ill.App.3d 1216, 770 N.E.2d 228 (5th Dist. 2002), to establish the offense of driving with a blood alcohol content in excess of .08, the State must prove beyond a reasonable doubt that defendant's "whole-blood-alcohol" concentration was .08 or more. Although evidence of "blood-serum alcohol" levels may be admitted, the State must present evidence that the equivalent whole blood level exceeded 0.08. Where State and defense experts disagreed on whether defendant's serum blood alcohol level exceeded .08 when converted to a whole blood level, the jury was required to resolve the conflicting evidence and draw reasonable inferences. Because the State's expert provided a basis by which a reasonable jury could have concluded that the defendant's whole blood alcohol level exceeded 0.08, the jury was entitled to accept that testimony and reject the contrary testimony of the defense expert. Viewed in a light most favorable to the prosecution, therefore, the evidence was sufficient to permit a reasonable jury to find that the essential elements of driving with a blood-alcohol concentration of 0.08 or more had been proven beyond a reasonable doubt.

People v. Workman, 312 Ill.App.3d 305, 726 N.E.2d 759 (2d Dist. 2000) The evidence was insufficient to sustain a conviction for driving under the influence of a drug. There is no "generic" offense of driving under the influence. To establish guilt of driving under the influence of a drug, the State is required to prove beyond a reasonable doubt that a driver was under the influence of a drug to a degree that rendered him incapable of driving safely. A police officer's opinion that a person is under the influence of a drug may be sufficient to sustain a conviction - if the officer has sufficient skills, experience or training to qualify as an expert.

Here, the arresting officer did not claim to have any significant experience or expertise in detecting whether a person was under the influence of drugs to the extent that his ability to drive was impaired, and was not knowledgeable about the nature or effects of lorazepam, the drug in question. Although a forensic chemist was called as a witness, she did not testify about the drug's side effects, the amount required to produce a significant effect, or any effect on a person's ability to drive and no medical tests were performed to determine whether defendant was in fact under the influence of a drug.

People v. Ernst, 311 Ill.App.3d 672, 725 N.E.2d 59 (2d Dist. 2000) As a matter of first impression, the Court held that the plain language of 625 ILCS 5/11-501.4-1 authorizes medical personnel to release the results of blood or urine tests directly to law enforcement officials. Although previous case law required a judicial order before police could obtain such evidence, those cases concerned the law before §11-501.4-1 was enacted in 1997. Authorities may consider BAC test results obtained under §11-501.4-1 in determining whether there is probable cause to arrest a defendant for DUI.

People v. Elliott, 308 Ill.App.3d 735, 721 N.E.2d 715 (2d Dist. 1999) Over objection at a jury trial for DUI, one of the arresting officers was allowed to testify that a document entitled "Warning to Motorist" is given to persons arrested for DUI. The officer testified that the document "explains the penalties if you do or don't take a breath test in regard to your driving privileges," including that the "penalties would be twice as much if you did not take a breath test as if you would take a breath test and fail it." The trial court found that a motorist's awareness of the penalties for refusing to take a breath test is relevant to his motivation in refusing the test. The Appellate Court held that §501.2(c)(1) authorizes the admission of evidence that a DUI suspect refused to submit to a breath test, but does not permit evidence that defendant knew the civil penalties stemming from that refusal. The court concluded that the admission of such evidence "is an inappropriate expansion" of the statute. The court rejected the State's argument that a motorist's knowledge of the potential consequences of a refusal to take a breath test constitutes circumstantial evidence of consciousness of guilt. The court acknowledged that knowledge of the civil penalties for refusing to submit to a breath test has some probative value, but concluded that the prejudice of such evidence outweighs that probative value.

People v. Kappas, 120 Ill.App.3d 123, 458 N.E.2d 140 (4th Dist. 1983) The defendant was stopped after police observed his car weaving out of his traffic lane. After the stop, the officer detected the odor of alcohol and found open containers of alcohol in the car. In addition, defendant did poorly on various field sobriety tests. A blood alcohol test administered 38 minutes after his arrest showed defendant's blood alcohol concentration to be .1170%. Defendant admitted having three beers before he began driving. The court held that the jury could reasonably conclude that defendant's blood alcohol concentration was .10% or higher when he was driving. The fact that there was a 38-minute period between the time defendant was observed driving and the time the breathalyzer test was given "should not result in a jury's verdict being overturned." Delay, if not inordinate or involving further consumption of alcohol, does not render breathalyzer test results nonprobative of blood alcohol concentration at the time of driving; instead, "matters of delay between driving and testing are properly viewed as going to the weight of the breathalyzer test results, and as such must be viewed in light of the circumstances surrounding the arrest." The delay in this case was "slight and totally insufficient to render the breathalyzer results nonprobative."

People v. Jacquith, 129 Ill.App.3d 107, 472 N.E.2d 107 (1st Dist. 1984) The defendant was convicted of driving under the combined influence of alcohol and drugs (Ch. 95½, ¶11-501(a)(4)). The Court reversed the conviction because the evidence established only that defendant was under the influence of alcohol, and was insufficient to prove that he was also under the influence of drugs. The evidence would have been sufficient to convict defendant of driving under the influence of alcohol (Ch. 95½, ¶11-501(a)(2)), but defendant was charged only under ¶11-501(a)(4), which requires the State to prove "not only that at the time of his traffic stop defendant was under the influence of alcohol but that he was under the influence of another

drug as well." The Court upheld the trial judge's determination that the police had probable cause to believe defendant was driving in a manner prohibited by ¶11-501 and that defendant refused to take a breathalyzer test. The Court noted, "the fact that defendant had been found not guilty does not preclude a subsequent finding of probable cause."

People v. Wells, 103 Ill.App.2d 128, 243 N.E.2d 427 (1st Dist. 1968) Where defendant testified that he walked home after accident and then drank, the fact that he was drunk two hours later failed to prove that he was intoxicated at the time of the accident.

Cumulative Digest Case Summaries **§50-2(b)**

People v. Martin, ___ Ill.2d ___, ___ N.E.2d ___ (2011) (No. 109102, 4/21/11)

1. Unlike some subsections of the misdemeanor DUI statute that require proof of impairment, there is an absolute prohibition against driving with any amount of a controlled substance in one's system, without regard to physical impairment. 625 ILCS 5/11-501(a)(6). Because possession of a controlled substance is unlawful *per se*, to convict a defendant of a violation of §11-501(a)(6), the State need only establish that defendant used or consumed a controlled substance before driving. This is a reasonable exercise of the State's police power, as there is no meaningful way to quantify impairment because of the dangers inherent in the drugs themselves and in the lack of predictability as to the drug's potency.

The State sustained its burden with respect to misdemeanor DUI under §11-501(a)(6). Defendant's blood tested negative for drugs or alcohol, but his urine tested positive for methamphetamine. This result was consistent with evidence that controlled substances enter the bloodstream first and are eliminated through the urinary tract. Defendant admitted that he had ingested methamphetamine at some unspecified time, but not on the date of the offense. A rational jury could conclude from this evidence that defendant's last use was sufficiently recent that some remnants of the drug remained in his urine on the night of the offense. The fact that other substances may give a positive result for the presence of amphetamine is irrelevant because there was no evidence defendant had used such a substance.

2. Aggravated DUI requires proof of misdemeanor DUI and an aggravating factor that elevates the offense to a felony. Where the aggravating factor is involvement in a motor vehicle accident resulting in death, the misdemeanor DUI must be "a proximate cause of the death." 625 ILCS 5/11-501(d)(1)(F). Whether proof of impairment is necessary to sustain a conviction for aggravated DUI under this subsection depends on whether impairment is an element of the underlying misdemeanor DUI. When the aggravated DUI is based on a violation of §11-501(a)(6), which requires no proof of impairment, §11-501(d)(1)(F) only requires a causal link between the physical act of driving and another person's death. There is no requirement of a causal connection between the presence of the controlled substance in the defendant's system and the death. A defendant who is involved in a fatal motor vehicle accident while violating §11-501(a)(6) is guilty of misdemeanor DUI only where his driving was not a proximate cause of the death.

In addition to proving the underlying misdemeanor DUI based on a violation of §11-501(a)(6), the State proved that defendant's driving was the proximate cause of the victims' deaths. Defendant's car crossed the center line at a curve on a two-lane highway and struck an oncoming car, killing the driver and passenger of that car.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

People v. Foltz, 403 Ill.App.3d 419, 934 N.E.2d 719 (5th Dist. 2010)

To sustain a charge of driving under the combined influence of drugs and alcohol, it is not sufficient to show that the defendant had enough drugs or enough alcohol in his system to render him incapable of driving safely. The State must prove that he had both some drugs and some alcohol in his system and that their combined effect rendered him incapable of driving safely, even if the alcohol or drugs alone would not.

The State's evidence failed to prove that defendant drove under the combined influence of drugs and alcohol because there was insufficient evidence that he had drugs in his system. Defendant was observed running a stop sign and he failed the walk-and-turn and one-leg-stand tests. Those tests were 68% and 65% accurate for determining alcohol impairment, respectively. But the only evidence offered related to drugs was the arresting officer's testimony was that he smelled burnt cannabis when defendant rolled down his car window. This evidence does not prove that defendant smoked cannabis that evening or that it was in his breath, blood or urine. Defendant could stand and walk without impairment, he successfully executed a left-hand turn, his speech was not slurred, and his eyes were not dilated, glassy or bloodshot. While the average adult is competent to testify to alcohol intoxication based on common experience, training or experience is necessary to qualify a witness to testify to drug intoxication. The arresting officer had no training in drug recognition and this was his first arrest for driving under the combined influence of drugs and alcohol.

(Defendant was represented by Assistant Defender Arden Lang, Springfield.)

People v. Harmon, 2012 IL App (3d) 110297 (No. 3-11-0297, 7/19/12)

The DUI statute prohibits an individual from driving or being in actual physical control of a vehicle while the alcohol concentration in the person's blood is .08 or more. 626 ILCS 5/11-501(a)(1). "Alcohol concentration" means grams of alcohol per 100 milliliters of blood. 625 ILCS 5/11-501.2(a)(5).

A nurse at the hospital where defendant's blood was taken testified that records indicated his blood serum alcohol content was "221 on admission." The trial court took judicial notice of the Illinois Administrative Code, which divides the blood serum number by 1.18 to obtain the whole blood equivalent. 20 Ill. Adm. Code 1286.40. The court concluded it could draw the reasonable inference that the number 221 meant .221 grams per milliliter of blood, and, applying the conversion factor, found that defendant's blood alcohol level was .187.

Because the nurse's testimony did not indicate the hospital's base unit of measurement for the amount of "221," the trial court had no basis on which infer the hospital's unit of measurement. When the State's evidence is incomplete, the trier of fact may not fill in the gaps in the evidence to support a conviction. Therefore, the State did not present sufficient evidence of defendant's blood alcohol level to support his conviction for DUI under §501(a)(1). The Appellate Court also concluded that it must vacate defendant conviction for driving under the influence of alcohol, 625 ILCS 5/11-501(a)(2), because the court relied on the statutory presumption of §11-501(a)(1) to convict defendant of that count as well.

People v. Vente, 2012 IL App (3d) 100600 (No. 3-10-0600, 6/6/12)

The Illinois Vehicle Code prohibits driving or being in actual physical control of any vehicle while there is any amount of drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of a controlled substance. 625 ILCS 5/11-501(a)(6). This section does not require proof of impairment, only that a driver unlawfully use or consume any amount of a controlled substance.

The Code also provides that it is not a defense to a charge of driving under the influence of drugs that the person is legally entitled to use drugs. 625 ILCS 5/11-501(b). But §11-501(b) does not bar a driver from lawfully using prescription medications where such use does not affect the ability of the driver to drive safely.

Defendant had morphine and codeine in her urine sample consistent with her use of prescription cough medicine. She had a valid prescription for such medicine and had taken it as prescribed. Therefore, the presence of the drugs in her system was not the result of unlawful use and consumption.

The court reversed defendant's conviction for a violation of §11-501(a)(6).

(Defendant was represented by Assistant Defender Glenn Sroka, Ottawa.)

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§50-2(c)
Blood-Alcohol Tests – Implied Consent

South Dakota v. Neville, 459 U.S. 553, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983) Evidence of a drunk driving suspect's refusal to submit to a blood-alcohol test may be introduced at his trial without violating his privilege against self-incrimination. Also, the admission of such evidence does not offend due process though the suspect was not warned that his refusal could be used against him. See also, **People v. Rolfingsmeyer**, 101 Ill.2d 137, 461 N.E.2d 410 (1984).

Illinois v. Batchelder, 463 U.S. 1112, 103 S.Ct. 3513, 77 L.Ed.2d 1267 (1983) Chapter 95½, ¶11-501.1(d)), which requires the police officer to file an affidavit stating he had reasonable cause to believe the suspect was intoxicated (where a DUI suspect refuses to submit to a breath test) does not violate the Fourth Amendment for failing to require that the officer state the facts supporting his belief. See also, **People v. Gordon**, 115 Ill.App.3d 1036, 451 N.E.2d 1032 (5th Dist. 1983).

People v. Rolfingsmeyer, 101 Ill.2d 137, 461 N.E.2d 410 (1984) The Supreme Court upheld the validity of the implied consent statute, which provides that evidence of a defendant's refusal to submit to a breath test shall be admissible at a criminal trial (Ch. 95½, ¶11-501.2(c)). The court rejected defendant's contention that the statute offends the separation of powers clause of the Illinois Constitution; "it is clear that the legislature of a State has the power to prescribe new and alter existing rules of evidence or to prescribe methods of proof."

People v. Bonutti, 212 Ill.2d 182, 817 N.E.2d 489 (2004) 20 Ill.Admin. Code §1286.310(a), which requires that a person suspected of DUI must be observed for 20 minutes before blood alcohol tests and "shall not have regurgitated or vomited," was intended to ensure the reliability of breathalyzer tests by avoiding the "false positive" that may result from regurgitation or vomiting. The court rejected the State's argument that the purpose of §1286.310(a) is satisfied so long as the testing officer fails to observe any vomiting or regurgitation during the 20-minute observation period, finding that the results of a blood alcohol test must be excluded whenever the subject regurgitated or vomited, whether or not such actions were observed by an officer. Here, the trial court properly suppressed BAC test results based upon testimony that defendant suffered from gastroesophageal reflex disorder (GERD), which can cause the silent regurgitation of stomach contents. The court rejected the State's argument that permitting the suppression of blood alcohol test results based on unobserved regurgitation or vomiting will allow "every future DUI defendant to walk into court with a manufactured GERD defense and walk out of court with an acquittal." In this case, the suppression motion was supported by defendant's personal physician, who testified about both the nature of GERD and defendant's 10-year bout with that condition. Concerning the State's claim that defendants could easily manufacture GERD defenses, the court stated, "Trial courts are smarter than that, and they appreciate the distinction between a family physician who has treated the accused for years and a hired gun who first met the accused last Tuesday."

People v. Hanna & Vaughn, et al., 207 Ill.2d 486, 800 N.E.2d 1201 (2003) Under the Illinois Administrative Code, the Department of Public Health may approve breathalyzer machines for use in Illinois where they have been "tested and approved by the Department in accordance with but not limited to the Standards for Devices to Measure Breath Alcohol promulgated by the National Highway Traffic Safety Administration." Among the standards promulgated by NHTSA are tests for input variation, ambient temperature stability, and vibrational stability. The court concluded that even if the plain language of the administrative regulation required the Department of Public Health to do such testing, that requirement would be absurd in light of testimony by the person in charge of the testing program that the three tests: (1) were irrelevant to the use of the devices in Illinois, and (2) had been performed by the NHTSA. Because

requiring the testing would lead to an absurd result that could not have been intended by the drafters, the regulation should be construed to dispense with any requirement of such testing.

People v. Murphy, 108 Ill.2d 228, 483 N.E.2d 1288 (1985) The results of an analysis of a defendant's blood are not admissible at a DUI trial when the hospital personnel do not take or preserve the blood in accordance with Department of Public Health standards, as required by Ch. 95½, ¶11-501.2(a). See also, **People v. Emrich**, 113 Ill.2d 343, 498 N.E.2d 1140 (1986).

People v. Keith, 148 Ill.2d 32, 591 N.E.2d 449 (1992) The defendant was charged with reckless homicide, DUI, and driving with a blood-alcohol concentration of .10 or more. The trial judge granted defendant's motion in limine to bar admission of the result of a breath-alcohol test because the license of the machine operator had expired at the time of the test, although it was renewed approximately two weeks later. The trial court found that only one set of standards governs the admissibility of breath-alcohol tests, and that those standards (Department of Public Health) require that the operator be licensed. The Supreme Court held that although Ch. 95½, ¶11-501.2 requires that breath test results are admissible in prosecutions for DUI only if the test complied with Department of Public Health standards, that section does not apply to prosecutions for reckless homicide. To admit chemical tests of blood alcohol levels in reckless homicide cases, the State must show that the machine was properly calibrated and maintained, the officer had the requisite knowledge to operate the machine, and the test was properly performed. The State could not establish the above foundation in this case.

People v. Pine, 129 Ill.2d 88, 542 N.E.2d 711 (1989) The Secretary of State has standing to appeal an order directing his office to issue a judicial driving permit under Ch. 95½, ¶6-206.1.

People v. Wierman, 107 Ill.App.3d 7, 436 N.E.2d 1081 (4th Dist. 1981) An officer is not required to issue a traffic ticket before asking the arrested person to submit to a breath test.

People v. Marks, 139 Ill.App.3d 388, 487 N.E.2d 636 (3d Dist. 1985) Police officer did not have probable cause for a DUI arrest. Though at 12:02 a.m. the officer saw defendant drive over a center line, stop at a traffic light, turn right from the left-turn lane, and drive in the center and left-hand lane of a two-lane street without lane markings, there was no "weaving or similar out-of-control driving." In addition, defendant's manner of driving could have been due to the "nature of the street and the absence of other traffic."

People v. Znaniecki, 181 Ill.App.3d 389, 537 N.E.2d 16 (3d Dist. 1989) A person asked to submit to a blood-alcohol test must be given the complete warnings set out in Ch. 95½, ¶11-501.1(c). The warning must include both the consequences of refusing the test and the consequences of submitting to a test which discloses a blood alcohol content of 0.10 or greater.

People v. Roberts, 115 Ill.App.3d 384, 450 N.E.2d 451 (2d Dist. 1983) The defendant was convicted of driving under the influence, and contended that it was error to introduce evidence of his refusal to perform sobriety tests. The defendant did not contend that his refusal was constitutionally protected (see **South Dakota v. Neville**, supra) but that the evidence of his refusal was "irrelevant" and allowed "the jury to improperly infer that his refusal was evidence that he was intoxicated." The Court stated, "evidence of a refusal to take a potentially incriminating test is similar to other circumstantial evidence of consciousness of guilt which may be inferred from a defendant's conduct. The evidence of refusal is not only probative; its admission operates to induce suspects to cooperate with law enforcement officials."

People v. Miller, 113 Ill.App.3d 845, 447 N.E.2d 1060 (4th Dist. 1983) The trial court properly admitted evidence of defendant's refusal to perform a "field sobriety test" and take a breath analysis test, though defendant was not warned that a refusal could be used against him.

People v. Gupton, 139 Ill.App.3d 530, 487 N.E.2d 1060 (1st Dist. 1985) A police officer who made a valid "citizen's arrest" (outside his normal jurisdiction) for DUI was authorized to ask the defendant to submit to chemical tests under Ch. 95½, ¶11-501.1.

Village v. Ford, 145 Ill.App.3d 19, 495 N.E.2d 595 (2d Dist. 1986) A police officer saw an automobile in a parking lot (not on a public highway) with its motor running and lights on. He saw the defendant slumped forward in the driver's seat. The officer had defendant leave the car and submit to field sobriety tests. At the police station, the defendant "consented" to a breath alcohol test. The defendant claimed that the officer told her that her license would be suspended unless she took the breath alcohol test. The officer claimed that he advised her that the rules of implied consent did not apply because she had been on private property and not on a public street. The trial court suppressed the breath test results on the basis that defendant's "consent" was not voluntary. The trial court also noted that defendant was not given **Miranda** warnings until after she took the test. The Appellate Court reversed. The results of a breath alcohol test constitute physical evidence, not evidence of a testimonial nature. Thus, the procedural protections encompassed by the **Miranda** warnings do not apply, because "**Miranda** warnings are required only when the evidence obtained is of a testimonial nature." The Court also held that consent is not necessary to admit breath alcohol test results into evidence in a DUI case — "a compulsory blood test, taken without the consent of the donor, does not violate any constitutional right . . . [and this] reasoning applies to the taking of a breath sample."

People v. Naseef, 127 Ill.App.3d 70, 468 N.E.2d 466 (3d Dist. 1984) The defendant was arrested for driving under the influence. He was asked to take a breath analysis test and refused. He was later asked again to take the test, and agreed to do so. The test showed a breath alcohol level greater than 0.10%. The defendant moved to exclude evidence of his initial refusal to take the test. The trial court ordered the evidence excluded, and the State appealed. The Appellate Court discussed Ch. 95½, ¶11-501.2(c) and held that the legislature intended to allow evidence of a defendant's refusal to submit to a test only where the defendant both refuses to take the test and does not complete the test. Because the defendant in this case did submit to the test and complete it, evidence of his initial refusal was properly excluded.

People v. Frazier, 123 Ill.App.3d 563, 463 N.E.2d 165 (4th Dist. 1984) Chapter 95½, ¶501.1(c), which provides that if a driver refuses to take a test "none shall be given," does not bar a test after an initial refusal. The Court held that it could "see no reason to prohibit the police from allowing the driver to take a test if he has reconsidered his refusal." See also, **People v. Duensing**, 138 Ill.App.3d 587, 486 N.E.2d 938 (3d Dist. 1985).

People v. Okun, 144 Ill.App.3d 310, 495 N.E.2d 115 (4th Dist. 1986) The Court held that there is no constitutional or statutory right to confer with counsel before submitting to a breathalyzer test. See also, **Cary v. Jakubek**, 121 Ill.App.3d 341, 459 N.E.2d 651 (2d Dist. 1984).

People v. Kern, 182 Ill.App.3d 414, 538 N.E.2d 184 (3d Dist. 1989) The Court held a request to consult counsel before taking a breath test did not constitute a refusal. Ordinarily, a defendant has no right to consult with counsel before taking the test. Here, however, the arresting officer allowed the defendant to contact an Iowa attorney, without considering this to be a refusal. The Iowa attorney then suggested that defendant contact an Illinois attorney because he was not familiar with Illinois law. When defendant requested to call an Illinois attorney, the officers said that he had to take the test first. Since the arresting officer testified that he honors suspects' requests to consult with counsel, and he permitted defendant to contact an Iowa attorney, it was improper to find that defendant refused the test "merely because he pressed a request to consult an Illinois attorney."

People v. Elledge, 144 Ill.App.3d 281, 494 N.E.2d 911 (3d Dist. 1986) Defendant was arrested for DUI and

was asked to submit to a chemical test for blood-alcohol content. The defendant refused to take a breath test, but asked the officer to take him to obtain a blood test. The reason for this request was that defendant believed a blood test to be more accurate than a breath test. The officer advised defendant that he could take a blood test at his own expense, and defendant agreed. "For no apparent reason, however, the officer never arranged for the blood test." Under these facts no refusal occurred.

People v. Severson, 379 Ill.App.3d 699, 885 N.E.2d 411 (2d Dist. 2008) 625 ILCS 5/11-501.1 authorizes summary suspension of driving privileges for a driver who refuses to submit to chemical testing of blood alcohol levels. The Appellate Court found that the defendant did not refuse to submit to testing where he initially declined to be tested, but relented after being told that he had no right to refuse and that his blood could be drawn without his consent. Although defendant continued to insist that he wanted the officers to indicate that he refused testing, that "statement simply reflects that he was submitting to testing under protest." The court stated, "Where . . . a motorist actually complies with a request for testing and the testing is completed without incident, the form of words he or she uses in responding to the officer's request should not be controlling."

People v. Kiss, 122 Ill.App.3d 1056, 462 N.E.2d 546 (5th Dist. 1984) The defendant was arrested for driving under the influence. The arresting officer filed an affidavit, pursuant to Ch. 95½, ¶11-501.1, stating that defendant had refused to submit to chemical tests. At the implied consent hearing, the officer testified that defendant was asked to submit to a breathalyzer test and refused. The officer further testified that defendant was not asked to submit to a blood or urine analysis. The trial judge found that defendant's refusal to take a breath test was not sufficient to suspend his license. The judge noted that the statute provides for three tests: blood, breath or urine. The defendant was not asked to take and did not refuse to take a blood or urine test. Thus, the judge found that defendant did not refuse to take the test set forth in the statute. The State appealed. The Court held that "a refusal to submit to any one of these tests upon request constitutes a refusal for purposes of the statute." See also, **People v. Greenspon**, 129 Ill.App.3d 849, 473 N.E.2d 331 (1st Dist. 1984).

People v. Kirby, 145 Ill.App.3d 144, 495 N.E.2d 656 (4th Dist. 1986) Defendant was arrested at the scene of an accident and refused to submit to a breath test. At a hearing to determine whether defendant's license should be suspended he testified that he did not remember anything that occurred for two days after his accident. His father corroborated this testimony. The trial judge ruled that defendant did not knowingly refuse the breath test. The Appellate Court reversed, holding that the implied consent law does not have an exception for unknowing refusals. See also, **People v. Goodman**, 173 Ill.App.3d 559, 527 N.E.2d 1065 (3d Dist. 1988); **People v. Solzak**, 126 Ill.App.3d 119, 466 N.E.2d 1201 (1st Dist. 1984).

People v. Carlyle, 130 Ill.App.3d 205, 474 N.E.2d 9 (2d Dist. 1985) A defendant is deemed to have refused a breathalyzer test where the required admonitions are given and the defendant is conscious, though due to the confusion or disorientation caused by his intoxication defendant at no time expressly refuses to take the test.

People v. Hedeen, 181 Ill.App.3d 664, 537 N.E.2d 346 (5th Dist. 1989) Defendant refused to take a breathalyzer where he failed to blow a sufficient breath sample into the machine to obtain a result. See also, **People v. Bentley**, 179 Ill.App.3d 347, 534 N.E.2d 654 (1st Dist. 1989); **People v. Bates**, 165 Ill.App.3d 80, 518 N.E.2d 628 (4th Dist. 1987).

People v. Capporelli, 148 Ill.App.3d 1048, 502 N.E.2d 11 (1st Dist. 1986) Chapter 95½, ¶11-501.2(a)(5), which provides that alcohol concentration is to be measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath (a relationship of 2100 to 1), has a rational basis and is valid.

Even though some studies dispute whether the ratio of 2100 to 1 is constant in all persons at all times, there is substantial support for the scientific principles and methods approved by the legislature. Thus, "it cannot be said that the legislature's provisions are irrational."

People v. Duensing, 138 Ill.App.3d 587, 486 N.E.2d 938 (3d Dist. 1985) The trial court granted defendant's in limine motion to exclude breathalyzer test results on the ground that the State failed to show that proper test procedures were followed. The Appellate Court reversed. The officer who administered the test testified that he was unaware whether his usual test procedures followed the manufacturer's recommendations or were approved by the Illinois Department of Public Health. However, the officer also testified that the breath analysis here was performed according to his department's test procedures checklist, and those procedures were based on Department of Public Health standards. See also, **People v. Clark**, 178 Ill.App.3d 848, 533 N.E.2d 974 (2d Dist. 1989).

People v. Johnson, 148 Ill.App.3d 4, 499 N.E.2d 66 (3d Dist. 1986) Department of Public Health Rule 6.01(a) — which requires "continuous observation of the subject for at least twenty (20) minutes prior to collection of the breath specimen, during which period the subject must not have ingested alcohol, food, drink, regurgitated, vomited or smoked" does not proscribe the aggregation of observations by two officers to satisfy the 20-minute period.

People v. Sides, 199 Ill.App.3d 203, 556 N.E.2d 778 (4th Dist. 1990) The results of field-sobriety tests (i.e., "walk the line," "one leg stand," and "finger to nose") are admissible without a foundational showing of their scientific reliability. Such tests are "not so abstruse as to require a foundation other than the experience of the officer administering them."

People v. Randle, 183 Ill.App.3d 146, 538 N.E.2d 1253 (5th Dist. 1989) Blood must be drawn from a defendant "under the direction of a licensed physician," but the physician is not required to actually be present.

People v. Miller, 166 Ill.App.3d 155, 519 N.E.2d 717 (3d Dist. 1988) Following a jury trial, the defendant was convicted of driving under the influence of alcohol. The Appellate Court held that the results of blood alcohol tests should not have been admitted. The defendant was driving on the wrong side of the highway and was involved in an accident. She was transported to a hospital for treatment. While defendant was at the hospital, blood samples were taken with her consent. Before and during the taking of the blood samples, defendant had a tube in her nose and intravenous tubes in her arms. In addition, she had been given medication. An expert testified that the blood samples disclosed a blood alcohol level of 0.125. The Appellate Court held that the State had failed to establish a proper foundation for admission of the blood test results because ‘ there was testimony the defendant had medication prior to the blood test. When a defendant is administered medication or treatment during or shortly before a blood test, the State shall prove the prescribed treatment or medication did not affect the accuracy of a subsequent blood test. It is not defendant's obligation to prove the test inaccurate."

People v. Dakuras, 172 Ill.App.3d 865, 527 N.E.2d 163 (2d Dist. 1988) Prior to his trial for DUI (Ch. 95½, ¶11-501(a)(2)), the defendant filed a motion in limine to exclude evidence of a horizontal gaze nystagmus (HGN) test that had been administered to defendant by a police officer. (The HGN test purportedly shows, based on involuntary movements of the subject's eyes, whether the blood-alcohol concentration is greater than .10.) The trial judge found that the HGN test was not generally accepted by the scientific community, and granted the defendant's motion. The State appealed. The Appellate Court upheld the exclusion order on another ground.

People v. Vega, 145 Ill.App.3d 996, 496 N.E.2d 501 (4th Dist. 1986) Testimony relating to a horizontal gaze nystagmus (HGN) test was improperly admitted. The State failed to lay a sufficient foundation, through expert testimony, showing the validity of such test. The testimony of the police officer who administered the test was not sufficient to establish the necessary foundation. See also, **People v. Smith**, 182 Ill.App.3d 1062, 538 N.E.2d 1268 (2d Dist. 1989).

People v. Boshears, 228 Ill.App.3d 667, 592 N.E.2d 1187 (5th Dist. 1992) While a witness may testify to his opinion that an individual is intoxicated, only chemical analysis of blood, urine, breath or other bodily substances is admissible to show one's blood-alcohol concentration. Although two officers should not have testified about their belief that defendant's blood-alcohol content exceeded .10, any prejudice was cured when the trial court sustained defense objections and ordered the jury to disregard the testimony.

Cumulative Digest Case Summaries **§50-2(c)**

Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552, ___ L.Ed.2d ___ (2013) (No. 11-1425, 4/17/13)

1. In **Schmerber v. California**, 384 U.S. 757 (1966), the Supreme Court upheld a warrantless blood test of a DUI arrestee after finding that the officer might reasonably have believed that he was confronted with an emergency in which the delay required to obtain a warrant might threaten to destroy evidence of the defendant's blood alcohol level. In **Schmerber**, the arrestee had been injured in an accident and was taken for medical treatment before he was arrested for DUI.

2. The court rejected the State's argument that due to the natural metabolization of alcohol in the bloodstream, there should be a *per se* rule that any person arrested for DUI may be subjected to a warrantless, nonconsensual blood test. The court stressed that a citizen clearly has a privacy interest which protects against forced physical intrusions of his or her body. In addition, warrantless searches are reasonable under the Fourth Amendment only if a recognized exception to the warrant requirement applies. One recognized exception allows a warrantless search where exigent circumstances make a warrant impractical, including where an immediate search is necessary to prevent the imminent destruction of evidence.

Whether exigent circumstances justify a warrantless search depends on whether, under the totality of the circumstances, it is reasonable to proceed without a warrant. Although the alcohol level of a person's blood begins to dissipate once the alcohol is fully absorbed, and continues to decline until the alcohol is eliminated, that fact does not mean that the "totality of circumstances" test should be abandoned. Instead, "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Although in some cases it may be impractical to obtain a warrant, that "is a reason to decide each case on its facts, . . . not to accept the 'considerable overgeneralization' that a *per se* rule would reflect."

The court noted that some delay is inevitable in DUI cases where the arrestee refuses to submit to a breathalyzer, because the defendant must be transported to a medical facility in order for his blood to be drawn. It is possible that while one officer is transporting the defendant to such a facility, a second officer could start the warrant process.

Furthermore, since **Schmerber** was decided there have been technological advances which allow for a more expeditious process of applying for a warrant. In addition, once blood alcohol testing is eventually performed, expert testimony allows the State to calculate and present the blood alcohol level at the time of the offense.

3. Noting that a case-by-case approach is common in Fourth Amendment cases, a plurality of the court rejected the argument that a bright line rule is needed to provide adequate guidance to law enforcement officers. The court also found that although a motorist has a diminished expectation of privacy in the operation of a motor vehicle, that lesser expectation does not apply to a motorist's privacy interest in preventing a government agent from piercing his or her skin for the purpose of obtaining a blood sample.

The plurality also rejected the argument that the government's compelling interest in combating drunk driving justifies the use of warrantless blood tests. First, the general importance of the government's interest does not justify departing from the warrant requirement without showing sufficient exigent circumstances to make it impractical to obtain a warrant. Second, states have a broad range of legal tools to combat drug driving, including implied consent laws. Third, many states already place restrictions on the use of warrantless blood testing, indicating that warrantless testing is not essential for effective drunk-driving enforcement.

4. The State did not argue that there were exigent circumstances in this case, and no exigency was apparent from the record where the officer admitted that he knew a that a prosecutor was on call, he had no reason to suspect that a judge would have been unavailable, and he failed to request a warrant solely because he thought that no warrant was required. Under these circumstances, the court declined to specify all of the factors which might be relevant in determining whether a law enforcement officer acts reasonably by taking a blood test without first obtaining a warrant.

McElwain v. Secretary of State, 2015 IL 117170 (No. 117170, 9/24/15)

625 ILCS 5/11-501.6(a), which provides that a driver who is arrested or ticketed relating to a serious injury in a traffic accident consents to blood, breath or urine testing to detect the presence of alcohol or drugs, qualifies for the "special needs" exception to the Fourth Amendment only where the testing is performed at the scene of the accident. Section 11-501.6(a) was applied unconstitutionally where police asked defendant to come to the police station some 48 hours after the accident, questioned him about his use of marijuana, issued a ticket for failure to yield, and asked him to take a chemical test.

People v. McKown, 236 Ill.2d 278, 924 N.E.2d 941 (2010)

When performed in compliance with the protocol adopted by the National Highway Traffic Safety Administration, horizontal gaze nystagmus testing has gained general acceptance as a reliable indication of alcohol consumption. However, the results of HGN testing do not, in and of themselves, establish that a particular person is impaired by the consumption of alcohol. Instead, HGN test results are but one factor to be considered in determining impairment. (See **EVIDENCE**, §19-27(a)).

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. Armer, 2014 IL App (5th) 130342 (No. 5-13-0342, 10/27/14)

1. The act of drawing blood from a DUI suspect constitutes a "seizure" under the Fourth Amendment, and requires a warrant unless there are exigent circumstances which make it impractical to obtain a warrant. Exigent circumstances have been found where the time needed to obtain a warrant would result in the destruction of evidence. Whether exigent circumstances justify a warrantless search in a particular situation is evaluated on a case-by-case basis.

The natural dissipation of alcohol over time does not create a *per se* exigency which categorically justifies an exception to the warrant requirement for nonconsensual blood testing in DUI cases. **Missouri v. McNeely**, ___ U.S. ___, 133 S. Ct. 1552, 185 L.Ed.2d 696 (2013). However, the natural dissipation of alcohol may support a finding of exigency in a specific case where other factors, such as the procedures in place for obtaining a warrant and the availability of a judge, affect whether the police can obtain a warrant within a time period that preserves the opportunity to obtain reliable evidence.

2. The court concluded that there were not sufficient exigent circumstances to justify a warrantless draw of defendant's blood. Defendant was involved in a single vehicle accident, and was taken to the hospital for evaluation of his injuries. One deputy followed the ambulance to the hospital, while a second officer remained at the scene of the accident. A third deputy also came to the hospital. The court found that because three officers were available, the investigation would not have been jeopardized had one of the officers attempted to contact the State's Attorney to secure a search warrant. The court noted that the officer did not testify that a fear of losing relevant evidence caused him to order the warrantless draw, and that he decided

not to seek a warrant only because he thought he had probable cause and did not need the State's Attorney's assistance.

The court concluded that under these circumstances, a reasonable officer would not have believed that sufficient exigent circumstances were present to justify the warrantless blood draw. The trial court's suppression order was affirmed.

(Defendant was represented by Assistant Defender Larry O'Neill, Mt. Vernon.)

People v. Bauer, 402 Ill.App.3d 1149, 931 N.E.2d 1283, 2010 WL 2780426 (5th Dist. 2010)

The State does not violate the Health Insurance Portability and Accountability Act (HIPAA) in gaining access to the results of a blood alcohol test performed in an emergency room. HIPAA does not create a privilege for patients' medical information. It provides for a procedure for disclosure of that information from a "covered entity." Law enforcement is not a covered entity. HIPAA also contains a law enforcement exception. Even if the State had obtained the records in violation of HIPAA, HIPAA does not provide for suppression of evidence as a remedy for its violation.

People v. Chiaravalle, 2014 IL App (4th) 140445 (No. 4-14-0445, 12/19/14)

To lay a proper foundation for the admission of breath test results, the State must show that the test was performed in accordance with regulations promulgated by the Illinois State Police. Section 1286.310(a) of the Illinois Administrative Code requires that before obtaining a breath test, the officer shall continuously observe the defendant for at least 20 minutes to ensure that the defendant has not ingested any alcohol or vomited. Substantial rather than strict compliance is required for the 20-minute observation period.

Here the officer was in a room alone with defendant during the 20-minute observation period. The officer told defendant that he was not allowed to do anything, such as belching or vomiting, that would bring alcohol to his mouth. The officer completed paperwork while defendant sat on a bench behind him. The paperwork took approximately 10 minutes. During the 20-minute period, the officer turned around to look at defendant every few minutes. He never heard any noise and saw no evidence that defendant had vomited or regurgitated.

The Appellate Court held that the officer substantially complied with the continuous-observation rule. Although he did not always have defendant in his line of sight, the rule does not require continuous visual observation. Section 1286.310(a) does not specifically define "observation," and the plain and ordinary meaning of the word is not limited to visual observation. Instead it includes the use of all the senses.

The purpose of the rule is to enure that a defendant does not do anything to compromise the accuracy of the test, such as ingesting alcohol or vomiting. But it does not require continuous visual observation to detect these types of activities. Here the officer periodically turned around to visually observe defendant and never heard any sounds that might have indicated defendant had vomited, belched or consumed alcohol. The officer thus maintained continuous observation through the full use of his senses and substantially complied with the rule.

The trial court's order excluding the breath test was reversed.

People v. Clairmont, 2011 IL App (2d) 100924 (Nos. 2-10-0924 & 2-10-0925 cons., 11/29/11)

When a motorist files a motion *in limine* to bar breath test results, the State must establish a sufficient foundation for the admission of the evidence by establishing that the test was performed in accordance with 625 ILCS 5/11-501.2(a) as well as the regulations promulgated by the Illinois Department of State Police.

Those regulations create a rebuttable presumption that an instrument was accurate at the particular time a subject test was performed when four conditions are met, one of which is that "[a]ccuracy checks have been done in a timely manner, meaning not more than 62 days have passed since the last accuracy check prior to the subject test." 20 Ill. Adm. Code 1286.200. The regulations also require that accuracy tests be performed every 62 days, to ensure the continued accuracy of approved evidentiary instruments. 20 Ill. Adm. Code 12686.230.

If checks could be performed only as required by §1286.200, a defendant could be convicted with evidence from an instrument that had not been tested for 62 days. So as not to render §1286.230 superfluous, and to read the two sections in harmony, evidentiary instruments must be tested for accuracy once every 62 days to ensure the reliability of test results. Noncompliance with this regulation invalidates test results and renders them inadmissible, unless the State rebuts the presumption of unreliability with proof that a test result is valid despite the lack of strict compliance with the regulation.

In these consolidated cases, the breath test machine used for Clairmont was checked and certified 60 days before he was tested and not again for 11 days after he was tested. The machine used for Fernandez was checked and certified three days before he was tested and not again until 62 days after he was tested. The State expressly disclaimed reliance on any theory of substantial compliance at the hearing below. Because accuracy tests were not performed every 62 days, the trial court correctly held the test results inadmissible in both cases.

Bowman, J., dissented. Failure to check the accuracy of the machine every 62 days did not automatically rebut the presumption of accuracy. That failure is merely a factor for the court to consider along with other relevant evidence in determining whether the defendant presented sufficient evidence to rebut the presumption of accuracy.

People v. Farris, 2012 IL App (3d) 100199 (Nos. 3-10-0199 & 3-10-0220, 4/10/12)

The Illinois Vehicle Code provides that "if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical possession of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds . . . has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test of his or her blood, breath or urine." 626 ILCS 5/11-501.2(c)(2).

Although the statute is silent on the question of whether testing without consent is authorized in situations not involving death or personal injury to another, the Illinois Supreme Court in **People v. Jones**, 214 Ill. 2d 187, 824 N.E.2d 239 (2005), held that the statute did not create a right to refuse testing in the absence of death or injury. An arrestee's lack of a right to refuse testing did not, however, authorize law enforcement officers to use physical force to collect a sample for testing.

The court reasoned that there was no practical need for the use of force as the statute eliminates any advantage a DUI arrestee might hope to gain from refusing testing. Refusal to submit to testing results in summary suspension of the arrestee's driving privileges, the same penalty that would result from testing indicating a blood-alcohol concentration over the legal limit. The use of force to collect a sample thus adds nothing to the protection of the public, while the inference of guilt from defendant's refusal to comply is sufficient to protect the public interest in the prosecution of DUI tickets.

Defendant was involved in an accident not involving death or personal injury to another, only injury to herself. The police detected the odor of alcohol on her breath. Defendant refused consent for a blood draw after she was transported to a hospital emergency room. Medical personnel took a blood sample from defendant by the use of force as officers held her down.

The circuit court correctly concluded based on **Jones** that the police lacked statutory authority to use force to obtain a blood sample. The Appellate Court therefore affirmed the order granting defendant's motion to suppress evidence from a blood-alcohol test using the blood sample.

People v. Hall, 2011 IL App (2d) 100262 (No. 2-10-0262, 12/9/11)

1. Under 625 ILCS 5/11-501.2(a)(1), blood alcohol test results are admissible in DUI prosecutions only if the tests were performed according to standards promulgated by the State Police. The requirements of those standards include that: (1) the blood sample is collected in the presence of the arresting officer or an agency employee who can authenticate the sample, and (2) samples are stored in tubes containing both an anticoagulant and preservative. (20 IL. Admin. Code 1286.320 (2011)). The failure to comply with §11-501.2 and the applicable regulations renders the testing results inadmissible in DUI prosecutions.

2. At defendant's trial for DUI, the trial court properly excluded the results of blood testing. There was no evidence that the arresting officer or some other agency employee was present when defendant's blood was drawn; the blood was drawn by a hospital nurse for medical purposes, and was subsequently tested when police discovered that the hospital had kept the samples. Furthermore, at least one of the tubes in which the blood was placed contained only an anticoagulant and not a preservative. The court noted that §11-51.2 was intended to insure the reliability of evidence in DUI prosecutions, and that the failure to comply with the regulations requires the exclusion of the results from trial.

The State argued that strict compliance with the provisions of the Administrative Code is not required so long as there is "substantial compliance." The court found that where the tube contained only an anticoagulant, there was no "substantial compliance" with the requirement that blood be stored in vials containing a preservative. Instead, the failure to use a preservative constitutes "zero compliance" with the administrative regulation.

The court also noted that neither it nor the trial court possessed the competence necessary to determine whether the failure to store the blood with a preservative compromised the integrity of the testing process. "We will not second-guess the reasoning behind the regulations by considering conflicting testimony regarding scientific matters that are within the purview of the Department of State Police."

3. The court noted, however, that the standards promulgated under §11-51.2 apply only to DUI offenses. In trials for other offenses, blood alcohol test results are to be received in evidence under the usual standards governing the admission of evidence.

However, the court refused to overrule the trial court's order excluding the evidence on the non-DUI counts against the defendant. The court concluded that the issue was forfeited because the State failed to raise it until appeal.

People v. Hutchinson, 2013 IL App (1st) 102332 (No. 1-10-2332, 11/8/13)

1. In Illinois criminal cases, medical records are generally inadmissible as business records. However, 625 ILCS 5/11-501.4 creates a business record exception to the hearsay rule which authorizes the admission of some blood alcohol test results in DUI prosecutions. Under §11-501.4, results from blood tests conducted on persons who are receiving medical treatment in a hospital emergency room are admissible in DUI prosecutions as a business record exception where: (1) the tests were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities, and (2) the analysis was performed by the laboratory routinely used by the hospital. Under §501.4(a)(3), the results of such testing are admissible "regardless of the time that the records were prepared."

Thus, §11-501.4 creates a special exception to the general rule where the defendant is tried for DUI and the testing was performed as part of emergency medical treatment.

2. The court rejected the argument that at a trial for DUI, the State failed to satisfy the foundation requirements of §11-501.4 before introducing defendant's blood alcohol test results. Admission of test results under §11-501.4 requires a foundation that the defendant was receiving medical treatment in a hospital emergency room, the testing was ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities, and the analysis was performed by the laboratory routinely used by the hospital.

A trauma center nurse testified that it was standard procedure to draw blood from motor vehicle accident victims, that the testing was ordered as part of providing emergency treatment, and that she drew the blood sample, checked defendant's ID band, and labeled the sample. In accordance with hospital procedure, a second nurse confirmed that the blood was being drawn from the correct patient and initialed the sample. The nurse testified that the blood was sent to the hospital lab immediately, that the lab was wholly contained within the hospital, and that the lab was routinely used to process blood tests. The nurse also identified a hospital report which stated defendant's "Alcohol, Serum" level.

The court concluded that under these circumstances, the foundation requirements for the admissibility of the blood tests under §11-501.4 were satisfied.

3. The court rejected defendant's argument that the nurse's testimony could not satisfy the foundation requirements because she lacked knowledge of the hospital's blood testing and record keeping procedures. Under §11-501.4, there is no requirement that the foundational witness be familiar with the actual making of the business record. Furthermore, even under the general business record exception to the hearsay rule, the maker or custodian of the record need not testify to satisfy the foundation requirements for the exception. Instead, anyone who is familiar with the business and its procedures may testify to the foundation for the business record exception.

4. The court also rejected defendant's argument that §11-501.4 did not survive the enactment of Illinois Rule of Evidence 803(6), which provides that medical records are not admissible in criminal cases under the business record exception. The Illinois Rules of Evidence were intended only to codify existing evidentiary law, and not to modify that law.

(Defendant was represented by Assistant Defender Emily Hartman, Chicago.)

People v. Miranda, 2012 IL App (2d) 100769 (No. 2-10-0769, 1/19/12)

1. The compelled extraction of a person's blood or urine for alcohol or controlled substance testing is a "search" under the Fourth Amendment, and is subject to the warrant and probable cause requirements unless a recognized exception applies. In reviewing the sufficiency of an affidavit for a search warrant, a reviewing court determines whether the magistrate had a substantial basis to conclude that probable cause existed.

2. An affidavit which contained no factual allegations concerning controlled substances, but which stated that defendant exhibited signs that he was under the influence of alcohol during a traffic stop, provided probable cause for a warrant to test defendant's blood sample for alcohol but did not afford probable cause to test a urine sample for controlled substances. The affidavit stated that defendant's eyes were glassy and bloodshot and that he admitted having consumed alcohol. There was a strong odor of alcohol inside the car, and defendant failed three field sobriety tests. Furthermore, at the time of the stop a front-seat passenger was holding two bottles of what appeared to be beer.

There was no mention of controlled substances in the affidavit except in the concluding paragraph, which stated the officer's opinion defendant was under the influence of alcohol and/or drugs. Under these circumstances, there was no probable cause for a warrant to test defendant's urine sample for the presence of controlled substances.

3. The court rejected the argument that even absent probable cause, the good faith exception permitted the admission of the result of the analysis of defendant's urine sample. The good faith exception does not apply if a warrant is based on an affidavit that is so lacking in indicia of probable cause as to render a belief to the contrary entirely unreasonable. Here, the good-faith doctrine did not apply because it was entirely unreasonable to rely on an affidavit which contained no allegations which would have supported a finding of probable cause concerning the presence of controlled substances.

4. The court also rejected the argument that the statutory implied consent provision (625 ILCS 5/11-501.1) authorized testing for controlled substances in the absence of a showing of probable cause. Under §5/11-501.1(a), a driver impliedly consents to testing for prohibited substances. However, implied consent is revoked where the driver refuses to consent to such a test. When a motorist revokes implied consent to testing, the police must find some other basis, such as a warrant supported by probable cause, to justify the testing.

The trial court's order granting defendant's motion to suppress was affirmed.

(Defendant was represented by Assistant Defender Kathleen Hamill, Elgin.)

People v. Olson, 2013 IL App (2d) 121308 (No. 2-12-1308, 6/28/13)

To lay a proper foundation for the admission of a breath test, the State must establish that the test was performed in accordance with the requirements of §11-501.2(a) of the Vehicle Code as well as regulations promulgated by the Illinois Department of State Police. Those regulations require that an

accuracy check be performed on the breath-testing machine at least once every 62 days.

If the check is not performed, the results of the tests performed during that period are presumptively inadmissible as unreliable. The State may rebut that presumption with proof that the test result is valid despite the lack of strict compliance with the regulation. Substantial compliance will be found where the deviation from the regulation neither affects the reliability of the test nor prejudices the defendant. **People v. Clairmont**, 2011 IL App (2d) 100924.

The trial court barred the results of defendant's breath test because an accuracy check was not performed until after 63 days had elapsed. Because the trial court misinterpreted **Clairmont** as establishing an irrebuttable presumption of unreliability, the Appellate Court vacated the trial court's order and remanded for an evidentiary hearing to allow the State an opportunity to demonstrate substantial compliance.

People v. Smith, 2015 IL App (1st) 122306 (No. 1-12-2306, modified upon denial of rehearing 11/13/15)

For breathalyzer test results to be admissible, the State must show, among other things, that the breathalyzer machine passed an accuracy test within 62 days of the breath test.

Here the State introduced a letter and report from the Illinois State Police stating that the breathalyzer machine used to test defendant's breath for alcohol had been tested for accuracy within 62 days of defendant's test. The report provided numerical results of the testing, but did not provide any interpretation of those results and did not state whether the machine had passed the accuracy tests.

The court held that the State failed to properly establish that the breathalyzer machine was certified as accurate within 62 days of defendant's test. The letter and report contained raw data but no interpretation of that data, leaving the court with no basis to discern whether the machine performed accurately. In the absence of such evidence, the breathalyzer test results (showing that defendant's alcohol concentration exceeded .08) were improperly admitted.

The court reversed defendant's conviction for driving with an alcohol concentration of .08 or more and remanded for a new trial.

(Defendant was represented by Assistant Defender Mike Gomez, Chicago.)

People v. Taylor, 2016 IL App (2d) 150634 (No. 2-15-0634, 7/20/16)

Under section 11-501.5(a) of the Illinois Vehicle Code, a police officer who has reasonable suspicion to believe that a defendant was driving under the influence of alcohol may request the defendant to provide a breath sample for a preliminary breath screening test. The defendant may refuse to take the test. The results of the preliminary breath screening test may be used to decide whether further blood alcohol tests are required. 625 ILCS 5/11-501.5(a).

The court held that the police officer did not comply with the statute when he stopped defendant and ordered him to take a preliminary breath test. The statute allows the test only if the officer requests and defendant consents to the test, although the consent does not need to be informed. The court held that the preliminary breath test results were properly suppressed and that there was no probable cause to arrest defendant without the test results.

People v. Weidner, 2014 IL App (5th) 130022 (No. 5-13-0022, 3/6/14)

1. Blood-alcohol test results are admissible in DUI prosecutions only if the analysis was performed in accordance with standards promulgated by the State Police. (625 ILCS 5/11-501.2) Such standards are established by 20 Illinois Administrative Code 1286.320, which requires that: (1) the blood sample is drawn by a certified professional in the presence of the arresting officer or another officer, and (2) where possible, the sample is collected by using a DUI kit provided by the State Police.

The version of §1286.320 in effect on the date of the offense states that the blood sample "should be drawn using proper medical technique." A prior version of the rule stated that the site of the blood draw should be cleaned with an alcohol-free disinfectant. However, that provision was removed because State Police testing showed that: (1) all disinfectant wipes contain trace amounts of alcohol, and (2) the use of

disinfectants containing minute amounts of alcohol has no effect on BAC analysis.

2. The court concluded that the State laid an adequate foundation to establish that defendant's blood sample was drawn using "proper medical technique" where it showed that the blood sample was drawn by a certified paramedic while the arresting officer was present, a State Police DUI kit was used, and the instructions which accompanied the kit were followed. The trial court did not err by admitting the blood alcohol test results although the test kit used to draw defendant's sample had been discarded and was not available for testing and a similar kit was shown to use disinfectant which contained a trace amount of alcohol.

People v. Wright, 2011 IL App (4th) 100047 (No. 4-10-0047, 9/16/11)

The court rejected defendant's argument that the toxicology test results of blood and urine samples which defendant provided should have been excluded because the officer failed to tell defendant that he could refuse to give the samples. A defendant who has been arrested for DUI has no constitutional right to refuse chemical testing. Furthermore, police inquiry into whether a suspect will submit to a blood alcohol test does not constitute "interrogation" within the meaning of **Miranda**.

(Defendant was represented by Assistant Defender Michael Vonnahmen, Springfield.)

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§50-3
Statutory Summary Suspensions

People v. Bywater, 223 Ill.2d 477, 861 N.E.2d 989 (2006) 625 ILCS 5/2-118.1(b) provides that a hearing on a petition to rescind a summary suspension of a driver's license must be held "[w]ithin 30 days after receipt of the written request." The Supreme Court found that the plain language of the statute requires a hearing within 30 days after the petition is filed with the circuit clerk, not within 30 days of the effective date of service on the State.

People v. Cosenza, 215 Ill.2d 308, 830 N.E.2d 522 (2005)625 ILCS 5/2-118.1(b), which provides that a hearing on a petition to rescind a statutory summary suspension "shall be conducted" within 30 days after receipt of defendant's request for a hearing, is satisfied where the hearing begins within 30 days after the defendant's written request. The court rejected the Appellate Court's holding that the hearing must be completed within 30 days of the request.

People v. Gerke, 123 Ill.2d 85, 525 N.E.2d 68 (1988) A circuit court does not have discretion to rescind a statutory summary suspension issued by the Secretary of State pursuant to ¶11-501.1 solely on the basis of the disposition of the underlying criminal charges.

People v. McClain, 128 Ill.2d 500, 539 N.E.2d 1247 (1989) The verification procedures in the Code of Civil Procedure (Ch. 110, ¶1-109) apply to a report filed by an arresting officer under the summary suspension of driver's license provisions (Ch. 95½, ¶11-501.1(d)). Thus, the provision in ¶11-501.1(d) (that the arresting officer file a "sworn report"), does not require that the report be sworn under oath; instead, "a verification pursuant to section 1-109 of the Code of Civil Procedure satisfies the requirements of section 11-501 of the [Vehicle] Code that a report be sworn."The Court also held that the arresting officer's failure to include the time and place of the defendant's breathalyzer test in his report was not a ground for rescission of the summary suspension. Compare, **People v. Badoud**, 122 Ill.2d 50, 521 N.E.2d 884 (1988) (arresting officers may swear to the reports at the hearing).

People v. Martinez & Salazar, 184 Ill.2d 547, 705 N.E.2d 65 (1998) Under the Illinois Vehicle Code, a summary suspension of driving privileges continues until "all appropriate fees have been paid" (625 ILCS 5/203.1), including the $60 reinstatement fee. Thus, where the summary suspension periods had elapsed several months earlier, but neither defendant had paid the reinstatement fee, the trial court did not err by entering convictions for driving with suspended licenses.

People v. Orth, 124 Ill.2d 326, 530 N.E.2d 210 (1989) The Court held that a driver whose license is summarily suspended bears the burden of proving that the suspension should be rescinded under Ch. 95½, ¶2-118.1(b). Placing the burden of proof on the suspended motorist does not violate due process. Once a motorist makes a prima facie case that a breath test result did not disclose a blood-alcohol concentration of 0.10 or more or that the test result did not accurately reflect the blood-alcohol concentration, the State can avoid rescission under ¶2-118.1(b) by moving for the admission of the test into evidence with the required foundation. The State may not prove the results of a breathalyzer test by relying on the arresting officer's reports, without establishing the foundation needed for the admission of the results in a criminal DUI proceeding. The required foundation for the admission of the breath test includes evidence that (a) the tests must have been performed according to the uniform standard adopted by the Department of Public Health (Department), (b) the operator administering the tests must have been certified by the Department, (c) the machine used must have been a model approved by the Department, must have been tested regularly for accuracy and must have been working properly, (d) The motorist must have been observed for 20 minutes before the first test and 15 minutes between the first and second tests, and during these periods he must not have smoked, regurgitated, or drank, and (e) the results appearing on the printout sheet must be identified as the tests given to the motorist. To establish a prima facie case based upon the claim that the test results were unreliable, the motorist may present evidence: "of any circumstances which tend to cast doubt on the test's accuracy, including, but not limited to, credible testimony by the motorist that he was not in fact under the influence of alcohol. We emphasize that this is not an invitation to commit perjury. Only if the trial judge finds such testimony credible will the burden shift to the State to lay a proper foundation for the admission of the test results."

Palatine v. Regard, 136 Ill.2d 503, 557 N.E.2d 898 (1990) Villages have the authority under Ch. 95½, ¶20-204 to adopt by reference the provisions of the Illinois Vehicle Code pertaining to the summary suspension of drivers' licenses. Also, a village attorney has authority to oppose a driver's petition to rescind the Secretary of State's summary suspension of his driver's license.

People v. Schaefer, 154 Ill.2d 250, 609 N.E.2d 329 (1993) Chapter 95½, ¶2-118.1(b) (625 ILCS 5/2-118.1) provides that where a motorist seeks to rescind a summary suspension of his driver's license due to his refusal to take a blood alcohol test, a hearing must be provided within "30 days after receipt of the written request." The Supreme Court held the 30-day period begins to run when the petition to rescind is filed with the circuit clerk with service on the State. Because the State bears the burden of obtaining a hearing, rescission is required where no hearing is held within 30 days.

People v. Smith, 172 Ill.2d 289, 665 N.E.2d 1215 (1996) Defendant was arrested for DUI, and was served with notice of a statutory summary suspension for refusing to take a breathalyzer. Defendant filed a petition to rescind the statutory summary suspension and a motion for substitution of the judge. Defendant also asked that the rescission petition be heard within 30 days, as is required by 625 ILCS 5/2-118.1(b). The trial judge scheduled a hearing on the motion to substitute for 15 days after the date the petition and motion were filed. At the hearing, the motion to substitute was summarily granted without argument by the parties or objection by the State. The case was transferred to a new judge, who scheduled the rescission hearing beyond 30 days after the date defendant had filed his petition and motion, but within 30 days after the motion to substitute was granted. At the hearing, defendant argued that the statutory summary suspension should be

automatically rescinded because the hearing had not been conducted within 30 days after the petition had been filed. The Supreme Court held that although a hearing on a petition to rescind must be held within 30 days after the petition is filed or defendant's first appearance on the DUI charge, the period is extended where delay is caused by the defendant. Where the defendant requests a substitution of the judge, the 30-day requirement begin to run after the new judge has received a request for the rescission hearing. Because it is to be presumed that the trial judge heard the motion for substitution "at the first available date," the trial court was justified in attributing the 15-day delay to the defense.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) In reviewing a trial court's ruling on a motion to rescind a summary suspension of a driver's license, a reviewing court should apply the two-part standard of review outlined **in Ornelas v. United States**, 517 U.S. 690 (1996). Thus, findings of historical fact will be upheld unless clear error is demonstrated, but the lower court's "ultimate legal ruling" is reviewed de novo. The court noted that it has never specifically decided whether the Fourth Amendment exclusionary rule applies to implied-consent proceedings, and that the State waived the issue by failing to argue that the exclusionary rule does not apply to summary suspension. "We do, however, acknowledge that the use of the phrase 'exclusionary rule' is a misnomer in this context," because a "prevailing petitioner would not gain the exclusion of anything from a rescission hearing." Instead, if the court finds "no reasonable grounds" for an arrest, the license suspension is simply rescinded.

People v. Wegielnik, 152 Ill.2d 418, 605 N.E.2d 487 (1992) After defendant was arrested for DUI, he received the statutorily required warning that his driver's license would be suspended for six months if he refused to take a breathalyzer test (Ch. 95½, ¶11-501.1(c)). Although defendant refused to take the test, he signed a statement acknowledging the warnings. At the hearing to rescind the six-month license suspension, the evidence showed that defendant was a native of Poland who could not read or write English (though he could speak the language "just a little"). The trial court found that defendant had a "basic inability" to understand the English language, and rescinded the suspension. The Appellate Court affirmed the rescission because defendant did not understand English well enough to comprehend that he had been asked to take a blood-alcohol test. The Supreme Court reinstated the license suspension. The implied-consent statute requires only that a motorist be warned that his license will be suspended for six months if he refuses to take a breathalyzer, and does not require that he understand the consequences of refusing to take the test. The purpose of the license-suspension procedure is to allow the State to obtain objective evidence about whether a driver is intoxicated, and the purpose of the warnings is not to advise drivers of their right to refuse the test, but to encourage them to provide the evidence. Delaying the test until an interpreter becomes available would vitiate the intent of the statute, because evidence of intoxication dissipates with time. The legislature did not intend that non-English speaking motorists be exempted from implied-consent laws.

People v. Fint, 183 Ill.App.3d 284, 538 N.E.2d 1348 (4th Dist. 1989) Defendant was entitled to have her summary suspension rescinded where the arresting officer's report stated that defendant was arrested at 11:47 p.m. on 9/3/88 and submitted to a chemical test at 12:21 a.m. on 9/3/88. See also, **People v. Cooper**, 174 Ill.App.3d 500, 528 N.E.2d 1011 (2d Dist. 1988).

People v. Hutchinson, 141 Ill.App.3d 1086, 491 N.E.2d 173 (1st Dist. 1986) An implied-consent hearing is civil in nature and the State has the burden to prove the issues by a preponderance of the evidence. The issues at an implied-consent hearing are whether: (1) defendant was lawfully arrested, (2) the officer had reasonable cause to believe defendant was driving or in physical control of a vehicle while under the influence, and (3) defendant refused to submit and complete a blood-alcohol test upon the request of an officer. Whether the defendant was informed his license would be suspended if he refused to submit is not an issue at an implied-consent hearing.

People v. Johnson, 379 Ill.App.3d 710, 885 N.E.2d 358 (2d Dist. 2008) Under 625 ILCS 5/6-205, a driver whose license has been summarily suspended may obtain a restricted driving permit in order to drive to and from work, to receive medical care, and to attend alcohol rehabilitation or other classes. The Appellate Court found that the act of operating a vehicle at 4:30 p.m. on a Sunday afternoon did not provide a reasonable suspicion of criminal activity sufficient to authorize a traffic stop, even if the officer knew that the driver had a restricted driving permit.

People v. Lazzara, 145 Ill.App.3d 677, 495 N.E.2d 1144 (1st Dist. 1986) A defendant's plea of guilty to driving while under the influence of alcohol is admissible at an implied-consent hearing on the issue of probable cause.

Cumulative Digest Case Summaries **§50-3**

People v. Elliott, 2014 IL 115308 (No. 115308, 1/24/14)

The subsequent rescission of a statutory summary suspension does not render invalid a conviction for driving on a suspended license where the conduct of driving on the suspended license occurs after the license has been suspended but before the suspension has been rescinded.

Here, defendant's license was suspended on October 11. Two days later, defendant was arrested and charged with driving on a suspended license. Six days after that, the circuit court rescinded the suspension. The Illinois Supreme Court held that the rescission only applied prospectively; it did not apply retroactively to render the charge of driving on a suspended license invalid.

Under 625 ILCS 5/2-118.1(b), a trial court has the authority to "rescind" a statutory summary suspension. The term "rescind" has numerous meanings, both legal and non-legal, and depending on the particular definition and context, can have either prospective or retroactive meaning. Similarly, the Illinois legislature uses the term "rescind" inconsistently, sometimes intending a retroactive meaning while other times a prospective meaning. But for a number of reasons, the legislature intended the term "rescind" to be prospective in the summary suspension statute.

First, a prospective reading best comports with the public policy behind the statutory summary suspension statute. That policy is to remove offending drivers from the road swiftly and certainly, not hopefully or eventually, and a prospective reading accomplishes this far better than a retroactive reading which would make the suspension contingent on future court proceedings.

Second, a prospective reading best comports with other provisions of the Illinois Vehicle Code relating to statutory summary suspensions. For example, some provisions state that a pending petition to rescind shall not stay or delay the summary suspension. Others make it a crime to drive at a time when a license is suspended. The provisions therefore suggest that the suspension remains in effect until proven to be invalid, supporting a prospective reading.

Third, a prospective reading makes the legislative scheme easy and convenient to enforce since courts only need to determine the status of the driver's license at the time of the arrest. A retrospective reading by contrast introduces uncertainty and inefficiency into the system.

Finally, a prospective reading is consistent with the way prior decisions have characterized the statutory summary suspension scheme by, for example, stating that a defendant must file a petition to determine whether the suspension should be lifted.

For these reasons, in relation to the crime of driving on a suspended license, the recision of a statutory summary suspension is of prospective effect only.

People v. Elliott, 2012 IL App (5th) 100584 (No. 5-10-0584, 11/1/12)

Within 90 days of notice of a statutory summary suspension of a driver's license, a driver may petition the court for a hearing to contest the statutory suspension. The summary suspension statute provides

that "[u]pon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension." 625 ILCS 5/2-118.1(b). Giving these words of the statute their plain, ordinary meaning, a rescission of the suspension does not merely terminate the suspension; it has the effect of undoing the suspension so that it never existed.

Defendant was charged with driving on a suspended license after his license was summarily suspended, but while a petition for rescission of the suspension was pending. That petition was ultimately granted and the court ordered rescission of the suspension. Because the suspension was void at its inception as a result of the order of rescission, the Appellate Court reversed defendant's conviction for driving on a suspended license.

People v. Smith, 2013 IL App (2d) 121164 (No. 2-12-1164, 11/20/13)

A statutory summary suspension of one's driving privileges under the implied consent law is valid even where the driver's license in question has already been suspended or revoked and has not been restored. The court declined to follow **People v. Heritsch**, 2012 IL App (2d) 090719, which held that a statutory summary suspension is a nullity where the driver's license in question is under a previous suspension or revocation.

Thus, defendant was eligible for an enhanced sentence under 625 ILCS 5/6-303(d-5) for driving while a summary suspension was in effect, although his driver's license had already been revoked when the actions which gave rise to the summary suspension occurred. At the time of the offense, §5/6-303(d-5) provided an enhanced penalty for subsequent offenses of driving with a revoked or suspended license if the previous revocation or suspension was for specified reasons. Defendant claimed that under **Heritsch**, the summary suspension was a nullity because his license was still under the previous suspension.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin).

People v. Webber, 2014 IL App (2d) 130101 (No. 2-13-0101, 5/30/14)

Defendant's license was originally revoked for driving a damaged vehicle. Following this revocation, defendant never renewed his license. Defendant's license was revoked a second time for driving under the influence (DUI). In the present case, defendant was charged with driving while his license was revoked (DWLR) which was enhanced to felony because the prior revocation was for DUI.

Defendant argued that the second revocation could be of no effect because he had no license that could have been revoked at the time he committed the DUI offense. His DWLR conviction thus could not be enhanced to a felony.

The Appellate Court held that defendant's license was properly and effectively revoked a second time for the DUI offense. In reaching this decision, the court agreed with **People v. Smith**, 2013 IL App (2d) 121164 (holding that a license may be revoked a second time even if it has not been renewed) and disagreed with **People v. Heritsch**, 2012 IL App (2d) 090719 (holding that a license cannot be revoked a second time unless it has been renewed).

The word "revocation" is a term of art that refers to a formal act and its attendant legal consequences, and there is no limitation on the number of times a license may be revoked. Accordingly, defendant's second revocation was effective and could be used to enhance his DWLR conviction to a felony.

The dissent would hold that the word "revocation" is not a term of art, and given its plain and ordinary meaning, cannot apply where a license has never been renewed.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

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